6019

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 108.

THE STEAMSHIP "BUENA VENTURA," JUAN DE LUZARRAGA, CLAIMANT, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

FILED JULY 29, 1890.

(16,935.)

(16,935.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 106.

THE STEAMSHIP "BUENA VENTURA," JUAN DE LUZARRAGA, CLAIMANT, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

INDEX.

	Original.	
Libel	1	1
Attachment and return	2	2
Monition	3	2
Claim of W. S. Keyser	4	3
A. S. Benn	6	5
The master	7	5
Test affidavit	9	7
Hearing and submission	12	8
Decree	12	9
Notice of appeal	14	9
Prayer for appeal	14	9
Order allowing appeal	15	10
Assignment of errors	15	10
Bond on appeal	17	11
Order extending time to file record	19	12
Standing interrogatories	20	12
Deposition of Juan de Luzarraga	23	17
Silvestre Asteinza	29	21
Clerk's certificate	36	24
Judge's certificate	36	24
Opinion	37	24

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 3, 1899.

	Original.	Print.
Stipulation as to printing certain original exhibits and admissions as to entries in log book and crew list	49	32
Bills of lading	52	32
Receipt for duties and fees	58	33
Certificate of payment of tonnage duties	59	34
Bill of health	60	36
Outward foreign manifest	61	37
Coasting manifest	62	38
Permit to proceed coastwise to lade for foreign port	62	38
Charter-party	63	39

1 Copy.

In the District Court of the United States, Southern District of Florida.

UNITED STATES OF AMERICA
vs.
STR. "BUENA VENTURA." } Prize.

To the Honorable James W. Locke, judge of the district court of the United States for the southern district of Florida:

The libel of Joseph N. Stripling, attorney of the United States for the southern district of Florida, who libels for the United States and for all parties in interest, against the steam vessel Buena Ventura in a cause of prize, alleges:

That, pursuant to instructions from the President of the United States, W. Maynard, of the United States Navy, in and with the United States ship of war the "Nashville," her officers and crew, did, on the 22nd day of April, in the year of our Lord one thousand eight hundred and ninety-eight, subdue, seize, and capture on the high seas, as prize of war, the said steam vessel "Buena Ventura," — and her cargo have been brought into the port and harbor of Key West, in the State of Florida, where the same now are, within the jurisdiction of this court, and that the said vessel and cargo are lawful prize of war and subject to be condemned and forfeited to the United States as such.

Wherefore the said attorney prays that all persons having or claiming any interest in said vessel or cargo may by the proper process of this court be duly notified of the allegations and prayers of this libel and cited to appear and claim the same; that the nature, amount, and value of said cargo may be determined, and that on proper proofs being taken and heard and all due proceedings being had the said Buena Ventura, together with her tackle, apparel, furniture, and cargo, may on the final hearing of this cause by the definitive sentence and decree of this court be condemned, forfeited, and sold as a prize of war and the proceeds distributed according to law.

J. N. STRIPLING,
U. S. Attorney, S. D. of Florida.

Let attachment and mo-tion issue as prayed, returnable 9th day of May, 1898.

Entered as of course.

E. O. LOCKE, *Clerk*,
By JULIUS OTTO, *D'y Clerk.*

Endorsed: Filed in the office of the clerk at Key West, this 23rd day April, A. D. 1898. (S'd) E. O. Locke, clerk.

2 Copy.

UNITED STATES OF AMERICA:

District Court of the United States, Southern District of Florida.

The President of the United States to John F. Horr, Esq., the marshal of the United States for the southern district of Florida, Greeting:

You are hereby commanded forthwith to attach, seize, and take into your custody the Spanish steamer "Buena Ventura" and cargo, wheresoever the same may be found within your precincts, and the same you are required to keep until the further order of this court, to answer the claim of United States for prize.

And how you shall have executed this precept make known to the said court, at the court-rooms, in Key West, Fla., the 9th day of May, A. D. 1898, at 10.30 o'clock a. m., by a return hereof, with your certificate of execution hereon written.

Witness the Honorable James W. Locke, judge of the said court, at Key West, in said district, this 23rd day of April, in [SEAL.] the year of our Lord one thousand eight hundred and ninety-eight, and Independence of the United States the hundred and twenty-first.

E. O. LOCKE, *Clerk*,
By J. OTTO, *D'y Clerk.*

Endorsed: Received the within writ of attachment April 23rd, 1898, and duly executed it as within commanded by attaching and taking into custody the Spanish steamer Buena Ventura. (S'd) John F. Horr, U. S. marshal, so. dist. of Florida, (S'd) by Alfred Atchison, d'y U. S marshal. Filed April 23rd, 1898. (S'd) E. O. Locke, clerk.

3 Copy.

UNITED STATES OF AMERICA:

District Court of the United States, Southern District of Florida.

The President of the United States to John F. Horr, Esq., the marshal of the United States for the southern district of Florida, Greeting:

Whereas, on the 23d day of April, A. D. 1898, the United States of America, by *their* proctor, Jos. N. Stripling, Esq., filed in the office of the clerk of said court *their* libel against the Spanish str. Buena Ventura in a cause of prize, alleging in substance that she was captured by the 3rd-rate cruiser "Nashville," April 22d, 1898, as a prize of war.

Wherefore the said libellant pray- that the usual process of attachment may issue against the said str. Buena Ventura; that moni-

tion may issue citing all parties having or claiming any interest or property in said str. "Buena Ventura" to appear and answer upon oath all and singular the matters aforesaid, and that this court will be pleased to decree to the libellant the proceeds of said prize *dollars* for services in said cause, and that the said str. "Buena Ventura" may be condemned and sold to pay said charges and expenses, and that the libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive; and whereas the judge of said court has ordered that attachment and monition be issued as prayed, returnable on Monday, the 9th day of May, A. D. 1898:

Now, therefore, you are hereby commanded forthwith to cite and admonish all persons whomsoever having any right, title, claim, or interest in or to the said str. "Buena Ventura" to appear at an admiralty session of said court, to be held in the court-rooms of said court, at Key West, in said district, on Monday, the 9th day of May, A. D. 189–, at 10.30 o'clock in the forenoon of that day, to show cause, if any they have, why prize money should not be decreed according to the prayer of the libellant, and to attend upon every session of said court from that time held until a final decree shall be rendered in the premises.

And this you are required to do by serving on the master of said vessel a true copy hereof and by posting two such other copies in the most public places of Key West and by publish*ed* a copy in the Key West Advertiser once a week for two weeks.

And how you shall have executed this precept make known to this court by a return hereof on or before the 9th day of May aforesaid, with your certificate of execution hereon written.

Witness the Hon. James W. Locke, judge of said court, at Key West, in said district, this 23rd day of April, in the year [SEAL.] of our Lord one thousand eight hundred and nin*ety*-eight, and of the Independence of the United States the hundred and twenty-first.

(S'd) E. O. LOCKE, *Clerk*,
(S'd) By J. OTTO, *D'p'y Clerk*.

Endorsed: Received the within writ of monition Apr. 23d, 1898, and duly executed it the same day by reading to the master of the S. S. Buena Ventura and posting two copies as within commanded. (S'd) John F. Horr, U. S. marshal, so. dist. of Fla., (S'd) by Alfred Atchison, d'y U. S. marshal. Filed April 23rd, 1898. (S'd) E. O. Locke, clerk.

4 (*Claim for ½ Cargo.*)

THE UNITED STATES
vs.
THE S. S. BUENA VENTURA & CARGO. } Prize.

To the Hon. James W. Locke, judge of the United States district court in and for the southern district of Florida, in admiralty:

And now comes into court W. S. Keyser and says that about

400,000 feet of pine lumber, being about one-half of the cargo of the steamship Beuna Ventura, is the sole and exclusive property of the firm of W. S. Keyser & Co., of Pensacola, Florida; that said firm consists of said W. S. Keyser and William Rudolf and of no other person or persons, and that no person or persons whomsoever, enemies of the United States, have any right, title, or interest whatsoever in or to said cargo or any part thereof.

That the said W. S. Keyser is a native-born citizen of the United States, residing in the city of Pensacola, in the State of Florida, and that the said William Rudolf is a subject of Great Britain, residing at Pensacola.

And he further denies that said cargo is lawful prize of war, as alleged and set forth in the captor's libel exhibited and filed in this cause.

Now, therefore, the said W. S. Keyser comes into court and claims the right to possession of said portion of the said cargo for the said firm of W. S. Keyser & Co., and prays that upon a hearing of this cause the court will award them restitution thereof free from charges for costs and expenses, and for such other and further relief in the premises as is right and just; and he will ever pray, &c.

5

— —.

W. S. Keyser, being first duly sworn, deposes and says that he — one of the claimants named in the foregoing claim, and that he knows the contents of the same, and that the matters and allegations therein contained are true as therein set forth; that his knowledge of said matters is absolute and acquired by means of his joint ownership of said cargo and as a member of the firm of W. S. Keyser & Co.

(S'd) W. S. KEYSER.

Sworn to and subscribed before me this 30th day of April, A. D 1898.

[SEAL.] (S'd) A. W. MARSH,
Clerk of the U. S. District Court for the Northern Dist. of Fla.

(S'd) JEFF'N B. BROWNE,
(S'd) JNO. C. AVERY,
Proctors for Claimants.

(Endorsed:) Filed May 6th, 1898. (S'd) E. O. Locke, clerk.

(*Claim for ½ the Cargo.*)

6 THE UNITED STATES
vs.
THE S. S. BUENA VENTURA & CARGO. } Prize.

To the Hon. James W. Locke, judge of the district court of the United States in and for the southern district of Florida, in admiralty:

And now comes into court A. S. Benn and says that he is a citizen of Mobile, Ala., and agent in the United States for the firm of Price & Pierce, of London, England, and that about 400,000 feet of pine lumber, being about one-half of the cargo, is the sole and exclusive property of the said firm of Price & Pierce, of London, England, and of no other person or persons, and that no other person or persons whomsoever, enemies of the United States, have any right, title, or interest whatever in or to said cargo or any part thereof.

That the said firm consists solely of Edward George Price, Ion Hamilton Benn, and Charles Napiel Lawrence, who are subjects of Great Britain, residing at London, England.

And he further denies that said cargo is lawful prize of war, as alleged and set forth in the captor's libel exhibited and filed in this cause.

Now, therefore, the said A. S. Benn comes into court and claims the right to the posession of the said portion of the said cargo for the said firm of Price & Pierce, and prays that upon a hearing of this cause the court will award to them restitution thereof free from charges for costs, and expenses, and *of* such other and further relief in the premises as is right and just; and he will ever pray, &c.

(S'd) A. S. BENN,
Agent for Price & Pierce.

7 A. S. Benn, being duly sworn, deposes and says that he is the duly authorized agent in the United States of said Price & Pierce, of London, where all of the members of the firm are and reside; that he knows the contents of the foregoing claim, and that the matters and allegations therein contained are true as therein set forth, and that his knowledge of said matters is absolute and acquired by means of his agency in the United States for the said Price & Pierce and by reason of his connection with the shipment of the said cargo.

(S'd) A. S. BENN.

Sworn to and subscribed before me this 2nd day of May, 1898.

[SEAL.] (S'd) RICH'D JONES,
Clerk of the U. S. District Court for the Southern District of Ala.

(S'd) JEFF'N B. BROWNE &
JNO. C. AVERY,
Proctors for Claimants.

(Endorsed:) Filed May 6th, 1898. (S'd) E. O. Locke, clerk.

(*Claim to Vessel by Master.*)

At a stated term of the district court of the United States for the southern district of Florida, held in the United States court-rooms, at Key West, on the — day of May, 1898.

Present: Honorable James W. Locke, district judge.

THE UNITED STATES
vs.
8 THE S. S. BEUNA VENTURA & HER CARGO. } Prize.

And now comes Juan de Luzarraga, intervening as bailee for the interest of Teodoro Larrinaga, Miguel Larrinaga, Domingo Larrinaga, Anselma Larrinaga, Felix Larrinaga, Teodore Arana, Rufino Amusategui, Teresa Amusategui, Antonio Ozamis, Wenceslao Andersch, and Pedro Moreno in the said steamship Buena Ventura, her engines, boilers, tackle, apparel, furniture, and equipment, appears before this honorable court and makes claim to the said steamship, &c., as the same are attached by the marshal, under process of this court, at the instance of the United States of America, under a libel against said steamship, her cargo, &c., as a prize of war; and the said Juan Luzarraga avers that before and at the time of the alleged capture of said steamship, her cargo, &c., the above-named Teodoro Larrinaga, Miguel Larrinaga, Domingo Larrinaga, Anselma Larrinaga, Felix Larrinaga, residing in England, and Teodoro Arana, Rufino Annesategui, Antonio Ozanis, Wenceslao Andersch, and Pedro Moreno, residing in Spain, all of whom are Spanish subjects, were the true and *bona fide* owners of the said vessel, her engines, boilers, tackle, apparel, and furniture; that no other person was the owner thereof; that he was in possession thereof for the said owners, and that the vessel, if restored, will belong to the said owners, and he denies that she was lawful prize.

Wherefore the said Juan Luzarraga, for and in behalf of the said owners, for whom he is duly authorized to make this claim, prays to be admitted to defend accordingly, and to show cause, pursuant to the terms of the monition issued herein and served upon the master thereof, as bailee, why the said steamship, her engines, &c.,
9 were not liable to be treated as enemy's property at the time and place and under the circumstances of the alleged capture, and why she should not be condemned as lawful prize of war, but should be restored with damages and costs.

(S'd) JUAN DE LUZARRAGA.

Sworn to before me this 18th day of May, 1898.

(S'd) JULIUS OTTO, *D'y Clerk.*

(S'd) CONVERS & KIRLIN,
(S'd) G. BOWNE PATTERSON,
Proctors for Claimants.

Endorsed: Filed May 18th, 1898. (S'd) O. E. Locke, clerk.

(*Test Affidavit.*)

U. S. District Court, Southern District of Florida.

THE UNITED STATES
against
THE STEAMSHIP BUENA VENTURA & HER CARGO. } Test Affidavit.

SOUTHERN DISTRICT OF FLORIDA, *ss:*

JUAN DE LUZARRAGA, being duly sworn, deposes and says:

1st. I am the claimant herein and have verified the claim on knowledge derived from my position as master of this vessel about three and a half years and from my official communications with the ship-owners and their representatives. The names and residences of the part owners I have learned since my examination *in preparatorio* from cables to my counsel from the said owners.

10

2nd. The Buena Ventura is a Spanish merchant vessel, and since I have been in command of her, as aforesaid, has traded between ports in England and Spain and the United States and West Indies. The vessel carries no passengers or mails, but is exclusively a cargo-carrier.

3rd. In the ordinary course of her said business as a common carrier the vessel, in the month of April, 1898, loaded a full cargo of lumber at Ship Island, Miss., and on the 14th day of April, 1898, the vessel and cargo was cleared at the custom-house in Scranton, Miss. The cargo was destined for Rotterdam, in the Kingdom of Holland, but the vessel was cleared coastwise from Scranton for Norfolk, in the State of Virginia, to which port the steamer was bound for coals. In the ordinary course of such a voyage the foreign clearance of the vesssl for Rotterdam would have been obtained and issued from the custom-house in Norfolk. The vessel was laden at the loading port under the agency of W. S. Keyser & Co., an American firm, as I am informed and believe, and conformed there in all things to the laws and regulations of the United States and of said port. She was detained at Ship Island by low water on the bar until April 19th, 1898, between 8 and 9 o'clock a. m., when she sailed from said place and proceeded on her voyage towards Norfolk, Va., as aforesaid. But for her capture and detention, as hereinafter set forth, she would have reached Norfolk and would have coaled and sailed from said port prior to May 21st, 1898.

4th. It appeared from the ship's papers delivered to the captors, and was a fact, that her cargo was all taken on board prior to May 21st, 1898, and, as I am informed and believe, the vessel was not otherwise excluded from the benefits and privileges of the President's proclamation of April 26th, 1898.

11

5th. At all times before the ship's seizure, on April 22nd, 1898, I and all my officers were ignorant that war existed between Spain and the United States and the vessel was bound and following the ordinary course of her voyage.

6th. While on the said voyage and in due prosecution thereof, and about 7 or 7.30 of the clock in the morning of April 22nd, 1898, said steamship Buena Ventura, being then about eight or nine miles from Sand Key light, was seized and wrongfully captured by the United States ship of war Nashville, under the command of a line officer of the United States Navy, and by means of a prize crew then and there placed on board forcibly brought into this port of Key West. On being stopped by said United States ship of war Nashville and being informed of the existence of war, the master and officers of the Buena Ventura submitted without resistance to seizure and to the placing of a prize crew on board of said vessel, proceeding therewith, under her own steam, into port.

7th. Deponent is informed and believes that by the existing policy of the Government of the United States, as evidenced by the repeated declarations of its Executive and by the proclamation of the President of the United States issued and published April 26th, 1898, as well as upon the principles in harmony with the present views of nations and sanctioned by recent practice, in accordance with which the President has directed that the war should be conducted, the steamship Buena Ventura, at the time and place and in the circumstances under which she was seized, was not liable to be treated as enemies' property, but, on the contrary, having sailed from a port of the United States prior to the 21st of April,
12 1898, and being bound to another port of the United States, which in the ordinary course of her voyage she would have reached and left with her coals long prior to May 21st, 1898, was exempt from capture as prize of war.

(S'd) JUAN DE LUZARRAGA.

Sworn to before me this 18th day of May, 1898.

(S'd) J. OTTO, *D'y Clerk.*

(Endorsed:) Filed May 18th, 1898. (S'd) E. O. Locke, clerk.

Spring Term U. S. District Court, Southern District of Fla., Monday, May 23rd, 1898.

Present: Hon. James W. Locke, judge.

THE UNITED STATES OF AMERICA
vs.
THE S. S. BUENA VENTURA & CARGO. } Prize.

Question of the cargo is submitted without argument.

The question of the vessel is argued, submitted, and decision is reserved.

(*Decree.*)

In the District Court of the United States, Southern District of Florida. In Admiralty.

13 UNITED STATES *against* SPANISH STEAMER "BUENA VENTURA" & CARGO. } Prize.

This cause having come on to be heard upon the allegations of the libel, the claims of the master, and testimony taken *in preparatorio*, and the same having been fully heard and considered, and it appearing to the court that the said steamer Buena Ventura was enemy's property, and was upon the high seas and not in any port or place of the United States upon the outbreak of the war, and was liable to condemnation and seizure, it is ordered that the same be condemned and forfeited to the United States as lawful prize of war; but it appearing that the cargo of said steamer was the property of neutrals, and not contraband or subject to condemnation and forfeiture, it is ordered that said cargo be released and restored to the claimants for the benefit of the true and lawful owners thereof.

It is further ordered that the marshal proceed to advertise and sell said vessel and make deposit of the proceeds in accordance with the law.

Key West, Fla., May 27th, 1898.

(S'd) JAMES W. LOCKE, *Judge.*

(Endorsed:) Filed May 27th, 1898. (S'd) E. O. Locke, clerk.

14 Spring Term U. S. District Court, Southern District Fla., Friday, May 27th, 1898.

Present: Hon. James W. Locke, judge.

THE UNITED STATES OF AMERICA *vs.* S. S. BUENA VENTURA & CARGO. } Prize.

Now comes Convers & Kirlin and G. Bowne Patterson, Esqrs., and in open court gives notice of their appeal in said cause on behalf of the said S. S. Beuna Ventura.

(*Prayer for Appeal.*)

United States District Court, Southern District of Florida.

THE UNITED STATES, Libellant, Appellees, *against* THE STEAMSHIP BUENA VENTURA; JUAN DE LUZARRAGA, Claimant, Appellant. } Prize.

And now comes Juan de Luzarraga, claimant, considering himself aggrieved by the decision and decree of condemnation herein,

and alleging error in the said decree appears in open court and appeals therefrom to the Supreme Court of the United States; he presents herewith an assignment of the errors complained of and a bond for costs, with surety in the sum directed by the court, and thereupon prays that his said appeal may be allowed, and
15 that the record and all proceedings may be duly certified to the Supreme Court of the United States in accordance with the rules and practice for such cases made and provided, to the end that the said appeal may be heard and determined by the said court.

Key West, Fla., May 28th, 1898.

(S'd) JUAN DE LUZARRAGA.

(S'd) CONVERS & KIRLIN,
(S'd) G. BOWNE PATTERSON,
Proctors for Appellant.

(*Order Allowing Appeal.*)

Upon reading and filing the foregoing notice and prayer of appeal and the assignment of errors and bond on appeal, the appeal of the claimant, Juan de Luzarraga, is hereby allowed.

Key West, Fla., May 28th, 1898.

(S'd) JAMES W. LOCKE,
U. S. District Judge.

(Endorsed:) Filed May 28th, 1898. (S'd) E. O. Locke, clerk.

(*Assignment of Errors.*)

United States District Court, Southern District of Florida.

THE UNITED STATES, Appellees,
vs.
THE BUENA VENTURA, Appellant. } Prize.

16 The claimant and appellant assigns error to the final decision and decree of the district court as follows:

1st. For — the court held and decided that the Buena Ventura was lawful prize of war.

2nd. For that the court omitted and refused to hold that the Buena Ventura was not lawful prize of war.

3rd. For that the court omitted and refused to find that the Buena Ventura was privileged and exempt from capture and condemnation as prize under and by virtue of the President's proclamation issued April 26th, 1898.

4th. For that the court omitted and refused to hold that the Buena Ventura was privileged and exempt from capture and condemnation under the fifth article of the President's proclamation by reason of the fact that she was bound to a port or place in the United States and had sailed on her then voyage from a foreign port prior to April 21st, 1898.

5th. For that the court omitted and refused to find that the Buena Ventura was exempt from capture and condemnation by

reason of the fact that her cargo had been taken on board and she had departed therewith from a port of the United States prior to May 21st, 1898.

6th. For that the court omitted and refused to hold that the vessel was privileged and exempt from condemnation by reason of the fact that she was in a port or place of the United States on April 26th, 1898, and was not within the classes of vessels excepted from the privileges accorded by the fourth article of the proclamation.

7th. For that the court omitted and refused to find that the Buena Ventura was in a place within the United States on April 21st and April 22nd, at the time of her capture, and hence was privileged and exempt from capture and condemnation under
17 the fourth article of the President's proclamation.

(S'd) CONVERS & KIRLIN,
(S'd) G. BOWNE PATTERSON,
Proctors for Claimant.

(Endorsed:) Filed May 28th, 1898. (S'd) E. O. Locke, clerk.

(*Bond.*)

United States District Court, Southern District of Florida.

THE UNITED STATES OF AMERICA
against
THE BUENA VENTURA.

Know all men by these presents that we, Juan de Luzarraga, principal, and The American Surety Company, surety, are held and firmly bound unto the United States of America in the sum of five hundered dollars, to be paid to the said United States of America; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Sealed with our se*l*as and dated the 28th day of May, 1898.

Whereas lately, at a session of this court, in a cause of prize pending therein, wherein The United States is libellant against the steamship Buena Ventura and her cargo and the said Juan de
18 Luzarraga is claimant of the steamship, a final decree was rendered in favor of said libellant, and the said claimant having fil*ing* his appeal papers and having obtained an order granting his appeal to the Supreme Court of the United States:

Now the condition of the above obligation is such that if the said Juan de Luzarraga shall prosecute his said appeal to effect and answer all damages and costs if he fail to make his appeal good, then the above obligation to be void; otherwise to remain in full force and effect.

(S'd) JUAN DE LUZARRAGA.
(S'd) THE AMERICAN SURETY COMPANY OF NEW YORK,
By GEO. W. ALLEN, *Att'y-in-fact.*

Taken and acknowledged before me May 28th, 1898.
(S'd) JULIUS OTTO,
[SEAL.] *U. S. Commissioner.*

Approved:
(S'd) JAMES W. LOCKE, *Judge.*

(Endorsed:) Filed May 28th, 1898. (S'd) E. O. Locke, clerk.

(*Order of Court Extending Time to File Record.*)

19 In the United States District Court, Southern District of Florida.

UNITED STATES OF AMERICA
vs.
THE STEAMER BUENA VENTURA AND HER CARGO.

This court having heretofore entered a final decree in the above-entitled cause condemning the said steamer and certain of her cargo, it is now, upon the underwritten consent of the United States attorney for the southern district of Florida and motion of J. Parker Kirlin, proctor for the claimant of said steamer and claimants of her cargo, ordered that the time of the claimants of the said steamer and her cargo to file a record on appeal herein and to perfect their said appeals be, and hereby is, extended for thirty days from June 25th, 1898.

(S'd) JAMES W. LOCKE, *Judge.*

I hereby consent to the entry of the foregoing order.
(S'd) J. N. STRIPLING,
U. S. Attorney.

(Endorsed:) Filed June 24th, 1898. (S'd) E. O. Locke, clerk.

20 *Standing Interrogatories*

Established by the district court of the United States for the southern district of Florida to be administered in prize causes in said court to all persons who may be produced as witnesses to be examined *in preparatorio.*

1st interrogate. What is your name, where were you born, and where have you lived for the last seven years? Where do you now live, and how long have you lived in that place? To what prince or State, or to whom are you, or have you ever been, a subject? Are you a married man, and if married, where do your wife and family reside?

2d interrogate. Were you present at the time of taking and seizing the ship, or her lading, or any of the goods or merchandises concerning which you are now examined? Had the ship concerning which you are now examined any commission; what, and from whom?

3d interrogate. In what place, latitude or part, and when, was the said ship and goods concerning which you are now examined, taken and seized? Upon what pretence, and for what reasons were they seized? Into what port were they carried, and under what colors did the said ship sail? What other colors had you on board, and for what reason had you such other colors? Was any resistance made, at the time when the said ship was taken? and if yea, how many guns were fired? and by whom? and by what ship or ships were you taken? Was the ship or vessel by which you were captured a ship of war, or a vessel acting without any commission, as you believe? Were any other and what ships in sight, at the time of the capture?

4th interrogate. What is the name of the master or commander of the ship or vessel taken? How long have you known the said master, and who appointed him to the command of said vessel? Where did said commander take possession of her, at what time, and what was the name of the person who delivered the possession to the said master? Where doth he live? Where is the said master's fixed place of abode, and where doth he generally reside? How long has he lived there, where was he born, and of whom is he now a subject? Is he married? If yea, where does his wife and family reside?

5th interrogate. Of what burden is the vessel which has been taken? What was the number of her mariners, and of what country were the said seamen and mariners? Did they all come on board at the same port, or at different ports, and who shipped or hired them, and when and where?

6th interrogate. Had you, or any of the officers or mariners belonging to the ship or vessel, concerning which you are now examined, any, and what, part, share or interest in the said vessel or her lading? If yea, set forth who and what goods or interest you or they have? Did you belong to the said vessel, at the time she was seized and taken? In what capacity did you belong to her? How long have you known her? When and where did you first see her, and where was she built?

7th interrogate. What is the name of the vessel? How long has she been so called? Do you know of any other name or names, and what are they, by which she has heretofore been called? Had she any passport or sea chart on board, and from whom? To what ports and places did she sail, during her said voyage, before she was taken? Where did her last voyage begin, and where was the said voyage to have ended? From what port, and at what time, particularly from the last clearing port, did the said ship sail, previously to the capture? Set forth all the ports to which she has sailed, and at which she has touched and traded, during her whole voyage, out and home.

8th interrogate. What lading did the said vessel carry, at the time of her first setting sail on her last voyage, and what sort of lading and goods had she on board, at the time she was taken? When was the same put on board? Set forth the different species of lading, and the quantity of each sort. Has any part of the cargo

of said vessel been unladen, since the commencement of her original voyage? If so, at what ports or places was it unladen? State the articles which were unladen.

9th interrogate. Who were the owners of the vessel, at the time when she was seized? How do you know that they were owners at that time? Of what nation or country are such owners by birth? Where do they reside, and where do their wives and families reside? How long have they resided there? Where did they reside before, to the best of your knowledge? To whom are they subject? How long have the present owners been in possession? and of whom did they purchase?

10th interrogate. Was any bill of sale made, and by whom, to the aforesaid owners of said vessel? and if any such were made, in what month and year, and where, and in the presence of what witnesses? Was any, and what, engagement entered into concerning the purchase, further than appears on the bill of sale? If yea, was it verbal or in writing? Where did you last see it, and what has become of it?

11th interrogate. Was the said lading put on board at one port and at one time, or at several ports and at several times, and at what ports, by name? Set forth what quantities of each sort of goods were shipped at each port.

12th interrogate. What are the names of the respective laders or owners, or consignees of said goods? What countrymen are they? Where do they now live and carry on their business? How long have they resided there? Where did they reside before, to the best of your knowledge? And where were the said goods to be delivered, and for whose real account, risk or benefit? Have any one of the said consignees or shippers, any and what interest in the said goods? If yea, whereon do you found your belief that they have such interest? Do you verily believe, that at the time of the lading the cargo and at the present time, and also if said goods shall be restored and unladen at the destined port, the goods did, do, and will belong to the same persons, and to none others?

21 13th interrogate. How many bills of lading were signed for the goods seized on board the said ship? Were any of those bills of lading false or colorable, or were any bills of lading signed, which were different in any respect from those which were on board the ship at the time she was taken? What were the contents of such other bills of lading, and what became of them?

14th interrogate. Are there in the United States of America any bills of lading, invoices, letters or instruments relative to the ship and goods, concerning which you are now examined? If yea, set forth where they are, and in whose possession, and what is the purport thereof, and when they were brought or sent to the United States.

15th interrogate. Was there any charter-party signed for the voyage, in which the ship, concerning which you are now examined, was seized and taken? What became thereof? When, where,

and between whom, was such charter-party made? What were the contents of it?

16th interrogate. What papers, bills of lading, letters or other writings, were on board the ship, at the time she took her departure from the last clearing port, before her being taken as prize? Were any of them burnt, torn, thrown overboard, destroyed or cancelled, or attempted to be concealed, and when, and by whom, and who was then present?

17th interrogate. Has the ship, concerning which you are now examined, been, at any time, and when, seized as a prize, and condemned as such? If yea, set forth into what port she was carried, and by whom, and by what authority, or on what account she was condemned?

18th interrogate. Have you sustained any loss by the seizing and taking the ship, concerning which you are now examined? If yea, in what manner do you compute such your loss? Have you already received any indemnity, satisfaction or promise of satisfaction, for any part of the damage which you have sustained, or may sustain, by this capture and detention, and when, and from whom?

19th interrogate. Is the said ship, or goods, or any, and what part, insured? If yea, for what voyage is such insurance made, and at what premium, and when, and by what persons, and in what country was such insurance made?

20th interrogate. In case you had arrived at your destined port, would your cargo, or any part thereof, on being unladen, have immediately become the property of the consignees, or any other person, and whom? Or was the lader to take the chance of the market for the sale of his goods?

21st interrogate. Let each witness be interrogated of the growth, produce, and manufacture of what country and place was the lading of the ship or vessel, concerning which you are now examined, or any part thereof.

22d interrogate. Whether all the said cargo, or any, and what part thereof, was taken from the shore or quay, or removed or transhipped from one boat, barque, vessel or ship, to another? From what, and to what shore, quay, boat, barque, vessel or ship, and when and where, was the same so done?

23d interrogate. Are there, in any other country, and where, or on board any and what ship or ships, vessel or vessels, other than the ship and vessel concerning which you are now examined, any bills of lading, invoices, letters, instruments, papers or documents, relative to the said ship, or vessel and cargo, and of what nature are such bills of lading, invoices, letters, instruments, papers or documents, and what are the contents? In whose possession are they, and do they differ from any of the papers on board, and in what particular do they differ?

24th interrogate. Were any papers delivered out of the said ship or vessel, and carried away in any manner whatsoever? And when, and by whom, and to whom, and in whose custody, possession or power, do you believe the same now are?

25th interrogate. Was bulk broken during the voyage in which

you were taken, or since the capture, of the said ship? And when, and where, by whom, and by whose orders, and for what purpose, and in what manner?

26th interrogate. Were any passengers on board the aforesaid ship? Were any of them secreted, at the time of the capture? Who were the passengers, by name? Of what nation, rank, profession or occupation? Had they any commission? For what purpose, and from whom? From what place were they taken on board, and when? To what place were they finally destined, and upon what business? Had any, and which of the passengers, any, and what property or concern, or authority, directly or indirectly, regarding the ship and cargo? Were there any officers, soldiers or mariners secreted on board and for what reason were they secreted? Were any of the citizens of the United States on board, or secreted or confined, at the time of the capture? How long, and why?

27th interrogate. Were, and are, all the passports, sea briefs, charter-parties, bills of sale, invoices and papers, which were found on board, entirely true and fair? Or are any of them false or colorable? Do you know of any matter or circumstances to affect their credit? By whom were the passports or sea briefs obtained, and from whom? Were they obtained for this ship only? And upon the oath, or affirmation, of the persons therein described, or were they delivered to, or on behalf of the person or persons who appear to have been sworn, or to have affirmed thereto, without their having ever, in fact, made any such oath or affirmation? How long time were they to last? Was any duty or fee payable, and paid, for the same? And is there any duty or fee to be paid on the renewal thereof? Have such passports been renewed, and how often? And has the duty or fee been paid for such renewal? Was the ship in a port in the country where the passports and sea briefs were granted? And if not, where was the ship at the time? Had any person on board any let-pass, or letters of safe conduct?

If yea, from whom and for what business? Had the said
22 ship any license or passport from any foreign power or authority during the voyage? If so, state from whom been obtained, and for what purpose and use.

28th interrogate. Have you written or signed any letters or papers concerning the ship and her cargo, other than those found on board and delivered to the captors? If yea, what was their purport, to whom were they written and sent, and what has become of them?

29th interrogate. Towards what port or place was the ship steering her course, at the time of her being first pursued and taken? Was her course altered, upon the appearance of the vessel by which she was taken? Was her course, at all times, when the weather would permit, directed to the place or port for which she appears to have been destined by the ship's papers? Was the ship, before or at the time of her capture, sailing beyond, or wide of the said place or port to which she was so destined by the said ship's papers? At what distance was she therefrom? Was her course altered, at any, and what time, and to what other port or place, and for what reason?

30th interrogate. By whom, and to whom, hath the said ship been sold or transferred, and how often? At what time, and at what place, and for what sum or consideration, hath such sum or consideration been paid or satisfied? Was the sum paid, or to be paid, a fair and true equivalent? Or what security or securities have been given for the payment of the same, and by whom, and where do they live now? Do you know, or believe, in your conscience, such sale or transfer has been truly made, and not for the purposes of covering or concealing the real property? Do you verily believe, that if the ship should be restored, she will belong to the persons now asserted to be the owners, and to none others?

31st interrogate. What guns were mounted on board the ship, and what arms and ammunition were belonging to her? Why was she so armed? Were there on board any other, and what, arms and ammunition, and when and where — they put on board? And by whom, or by what authority, or for what purpose or destination, and on whose account were they put on board?

32d interrogate. What is the whole which you know or believe, according to the best of your knowledge and belief, regarding the real and true property and destination of the ship and cargo concerning which you are now examined at the time of the capture?

23 In the District Court of the United States in and for the Southern District of Florida. In Admiralty.

THE UNITED STATES OF AMERICA
vs.
THE SPANISH STEAMER BUENA VENTURA AND CARGO. } Prize.

Deposition of Juan de Luzarraga, a witness produced, sworn, and examined *in preparatorio* on the 4th day of May, in the year 1898, at the U. S. court-house, Key West, Florida, in said district, on the standing interrogatories established by the district court of the United States for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the captors of a certain ship or vessel called the Buena Ventura.

1st. To the first interrogatory deponent answers:

My name is Juan de Luzarraga; born at Mondaca, Spain. I have been navigating the ocean for the last seven years. I claim Mondaca, Spain, as my home, and it has been my home since I was born. I am a subject of Alphonso XIII, King of Spain. I am not married.

2d. To the 2nd interrogatory deponent answers:

I was present at the time of the taking and seizing of the said ship and her cargo. The said ship had a royal patent from the Spanish government to engage in the merchant business.

3d. To the 3rd interrogatory deponent answers:

24 The ship was captured about 8 or 9 miles from Sand Key light-house, near Key West, on account of the war existing

between the United States and Spain. The ship sailed under the Spanish flag, and was carried into the port of Key West. She was captured on the 22nd day of April, A. D. 1898. I had no other national flag on board. There was no resistance made at the time of capture of said ship. The ship was captured by the U. S. man-of-war Na-hville. I saw several other war ships in sight, but I do not know their names.

4th. To the 4th interrogatory deponent answers:

The name of the master of the ship is Juan de Luzarraga. I was appointed captain by the owners of said ship, Messrs. Larrinaga & Co. I took charge of the ship about three years ago. The owners of the ship placed me in command.

5th. To the 5th interrogatory deponent answers:

The ship captured is of 1,332 tons register. There are 34 mariners, including myself, on said vessel. They are subjects of Spain. I shipped the crew myself. They are shipped at the port of Santandere, Spain, and two of them being shipped at Liverpool, England.

6th. To the 6th interrogatory deponent answers:

None of the crew or officers of the ship had any interest in the said ship or her cargo. I have know- the ship for about 12 years. I first knew her in Liverpool. She was built in Sunderland, England.

7th. To the 7th interrogatory deponent answers:

The name of the vessel was Buena Ventura. She has been called by that name ever since I have known her. She has never had any other name, so far as I know. We had clearance papers from the collector of customs at Scranton, Miss.; also papers from the Spanish consul. The last voyage began at Scranton, to Rotterdam, Holland. The said ship cleared from Scranton on the 14th day of April, 1898, and sailed on the 19th day of April, A. D. 1898.

8th. To the 8th interrogatory deponent answers:

When the ship left Santandere on her last voyage, bound for Cuba and Porto Rico, she had a general cargo of provisions and clothing, which I delivered at said places. When the said ship left Cuba for the United States she had no cargo on board except ballast. When the said ship was captured she had on board about 800,000 feet of lumber. The cargo was put on board from the 1st day of April, 1898, to the 13th day of April, 1898. No part of the said cargo has been unladen since the commencement of the voyage.

9th. To the 9th interrogatory deponent answers:

The owners of the vessel at the time of her seizure were Messrs. Larrinaga & Co., of Liverpool, Eng. The ship's papers show that the said persons are the owners of said vessel and the Royal patent shows the same. The said owners are Spanish subjects by birth. They and their wives and families reside in Liverpool, England. They have resided there about one year and a half. They have been in possession of her ever since I have known her, about 12 years. I do not know from whom the present owners purchased said vessel.

10th. To the 10th interrogatory deponent answers:

I do not know anything about any bill of sale for said vessel.

11th. To the 11th interrogatory deponent answers:

26 The said lumber was all put on board at one time at Scranton, Miss.

12th. To the 12th interrogatory deponent answers:

I cannot tell the names of the respective owners or laders of said cargo. The manifest and bill of lading will show that. I do not know the nationality of the owners of said cargo. The lumber is consigned to persons in Rotterdam, but I do not know who owns it. The goods were to be delivered at Rotterdam, I suppose, to the account of the consignees, yet I do not know this to be so.

13th. To the 13th interrogatory deponent answers:

I think there were three bills of lading signed for each lot of lumber shipped. These bills of lading were true. No bills of lading were signed which are different from those on board my vessel. They were all alike.

14th. To the 14th interrogatory deponent answers:

Yes; there is a copy of the bills of lading in Scranton, Miss. The agent is in Scranton, Miss., and is named Casser.

15th. To the 15th interrogatory deponent answers:

The ship at the time she was seized was under a charter-party signed for the voyage. I gave it up with the other papers to the capturing ship. I do not know when or between whom the charter-parties were made, except that I suppose the owners of the ship were parties on one side. I do not know the contents of the charter-party.

16th. To the 16th interrogatory deponent answers:

Only the papers taken by the officers were on board at the
27 time of the capture. None of them were secreted, burned, torn, or destroyed.

17th. To the 17th interrogatory deponent answers:

I do not know whether or not the said ship has ever been seized or captured as a prize previous to this.

18th. To the 18th interrogatory deponent answers:

Personally I have not sustained any loss by the capture of this vessel. I have not received any indemnity or promise of indemnity, owing to this capture, from any one.

19th. To the 19th interrogatory deponent answers:

I do not know whether or not said cargo or ship was insured.

20th. To the 20th interrogatory deponent answers:

I do not know who the cargo would belong to if it were to be delivered.

21st. To the 21st interrogatory deponent answers:

I do not know what country or place produced or raised the lumber of which the ship was laden. I suppose it came from the United States.

22d. To the 22nd interrogatory deponent answers:

The cargo was brought from shore to my ship, at Ship Island, on the 31st day of March, 1898, up to the 13th day of April, 1898.

23d. To the 23rd interrogatory deponent answers:

I do not know of any other papers in the U. S. or anywhere else that relate to the cargo other than has been set forth previous to this.

24th. To the 24th interrogatory deponent answers:

Papers were delivered out of the ship to the officers of the capturing ship. I believe the said papers are in the hands of this court.

28 25th. To the 25th interrogatory deponent answers:

None of the cargo was taken out during the voyage or since the capture.

26th. To the 26th interrogatory deponent answers:

There were no passengers, officers, soldiers, marines, or citizens on board said ship at the time of her capture.

27th. To the 27th interrogatory deponent answers:

All the papers found on board the ship were true and correct. I do not know of anything which would affect the credit of said papers. No person on board of my ship had any passport, &c. The ship had only a royal patent from the Spanish authority.

28th. To the 28th interrogatory deponent answers:

I have not written any letter or papers since the capture of said ship, except a telegram to the owners requesting money for the sustinence of the crew.

29th. To the 29th interrogatory deponent answers:

At the time of the ship being first pursued and captured she was steering near the coast, along the Florida reef, bound for Norfolk for coal. I did not change the course after being pursued by the capturing vessel. The course was, at all times when the weather would permit, *was* directed toward the port for which the vessel, according to her papers, was destined. The ship was not at any time off her course or beyond or wide of her destination, as shown by the ship's papers. Her course was altered for Key West after she was captured.

30th. To the 30th interrogatory deponent answers:

29 I do not know if the ship was ever transferred or sold. If the ship was restored or released I believe she would belong to the owners named.

31st. To the 31st interrogatory deponent answers:

There were no guns mounted on board said ship. I had one gun, the pilot had another, and the engineer had a pistol.

32d. To the 32nd interrogatory deponent answers:

I believe the said ship was on her regular trade in the merchant service and that the cargo and ship belong to the parties mentioned.

(S'd) JUAN DE LUZARRAGA.

Sworn to and subscribed before me this 4th day of May, A. D. 1898.

(S'd) J. M. PHIPPS,
Prize Commissioner.

In the District Court of the United States in and for the Southern District of Florida. In Admiralty.

THE UNITED STATES OF AMERICA
vs.
THE S. S. BUENA VENTURA & CARGO. } Prize.

Deposition of Silvestre Asteinza, a witness produced, sworn, and examined *in preparatorio* on the 4th day of May, A. D. 1898, at the U. S. court-house, Key West, Florida, in said district, on the standing interrogatories established by the district court of the United States for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the captors of a certain ship or vessel called the
30 Buena Ventura and her cargo.

1st. To the 1st interrogatory deponent answers:

My name is Silvestre Asteinza; in Mituria, Spain. I have been navigating the seas for the last seven years. I am a subject of Spain. I am not married.

2d. To the 2nd interrogatory deponent answers:

I was present at the time of the capture of the Buena Ventura. I do not know whether she had any commission or not.

3d. To the 3rd interrogatory deponent answers:

At the time of the capture the vessel was about 8 or 9 miles from Sand Key light-house, on the Florida reefs. The vessel was seized on account of the war between the United States and Spain. The vessel was taken into the port of Key West. She sailed under the Spanish flag. We had no other colors on board. There was no resistance made at the time the ship was captured. The man-of-war that captured the ship fired three guns at her. The Nashville made the capture. She is a ship of war, the one that made the capture. There were several ships near by, but I do not know their names.

4th. To the 4th interrogatory deponent answers:

The name of the captain of the ship is Juan de Luzarraga. I have known him about two years. I do not know where the captain took possession of the vessel. The captain lives in a town in Spain called Mondaca. I do not know how long it has been his place of residence. He is a subject of Spain. He is not married.

31 5th. To the 5th interrogatory deponent answers:

The vessel is of 1,331 tons, registered Spanish. She had on board 34 mariners, including the captain. They are all Spanish subjects. At different ports they were shipped. They were hired by the captain.

6th. To the 6th interrogatory deponent answers:

I have no interest in the ship or cargo. I was 1st officer of the vessel at the time she was captured. I have known the vessel for two years. I first saw her in Liverpool, England. I do not know where she was built.

7th. To the 7th interrogatory deponent answers:

The name of the vessel is the Buena Ventura. She has been called by that name ever since I knew her. I do not know if she has been called by any other name. I do not know if she has any passports except the royal patent. The last voyage commenced at Liverpool and was to have ended at Rotterdam, Holland. At the last voyage, and before she was captured, we left Ship Island for Norfolk on the 19th day of April, 1898. We touched at the ports of Liverpool, Santander, San Juan de Porto Rico, Havana, Manzanillo, Cienfuegos, Ship Island on our last voyage previous to being captured.

8th. To the 8th interrogatory deponent answers:

We had on board a general cargo when we left Liverpool. When we were captured we had on board a cargo of lumber; that cargo was put on board on the 1st day of April. I do not know how much lumber we had on board. No part of the cargo has been unladen since we left port.

9th. To the 9th interrogatory deponent answers:

32 The owners of the vessel at the time of her capture, Larrinaga & Co., of Liverpool. I have no other to the contrary. The owners are by birth Spanish subjects. They and their families live in Liverpool; some of them live in Spain. I do not know how long they have lived in said places. I believe and have always heard that they are subjects of Spain. I do not know how long they have owned said ship.

10th. To the 10th interrogatory deponent answers:

I know nothing in relation to the matters and things set forth in the last question.

11th. To the 11th interrogatory deponent answers:

The cargo was put on board at one time, in one port.

12th. To the 12th interrogatory deponent answers:

I do not know the consignees or owners of said cargo. The cargo was to be delivered at Rotterdam, Holland.

13th. To the 13th interrogatory deponent answers:

I know nothing about the bills of lading being signed for this cargo.

14th. To the 14th interrogatory deponent answers:

I know nothing about any bills of lading and invoices in the United States.

15th. To the 15th interrogatory deponent answers:

I know nothing about any charter-party for the voyage.

16th. To the 16th interrogatory deponent answers:

I do not know anything about any papers on board, and do not know if any of them were cancelled, destroyed, or burned or thrown overboard.

17th. To the 17th interrogatory deponent answers:

33 I do not know whether or not said ship was ever before captured.

18th. To the 18th interrogatory deponent answers:

I have not sustained any loss by this capture. I have not re-

ceived any indemnity, promise of satisfaction -or any damage sustained or which may be sustained.

19th. To the 19th interrogatory deponent answers:

I do not know if the ship or her cargo was insured.

20th. To the 20th interrogatory deponent answers:

I do not know anything in relation to the matters and things therein interrogated in the above question.

21st. To the 21st interrogatory deponent answers:

I do not know where the cargo was produced.

22d. To the 22nd interrogatory deponent answers:

The whole cargo was taken on board at Ship Island, in lighters, between April 1st and April 14th, 1898.

23d. To the 23rd interrogatory deponent answers:

I do not know anything about the ship's papers.

24th. To the 24th interrogatory deponent answers:

I saw one of the officers take away some papers, but I do not know what papers were taken. The officer was from the man-of-war. I do not know where those papers are.

25th. To the 25th interrogatory deponent answers:

None of the cargo has been taken out since the voyage commenced or since we were captured.

26th. To the 26th interrogatory deponent answers:

There are no passengers, soldiers, mariners, officers on
34 board or secreted on board the ship. There were no citizens of the United States secreted or confined on board said vessel.

27th. To the 27th interrogatory deponent answers:

I know nothing in relation to the matters and things interrogated in the foregoing question.

28th. To the 28th interrogatory deponent answers:

I have not signed any letters—papers concerning the ship and cargo—since I was captured.

29th. To the 29th interrogatory deponent answers:

We were about 9 miles from Sand Key, and were steering east, intending to go to Norfolk for coal. The course was not altered upon the appearance of the vessel that captured us. The course was at all time- directed toward our point of destination, as shown by the ship's papers. The ship before her capture was not sailing beyond or wide of her place of destination. The course was altered after we were captured. We came into Key West as a prize.

30th. To the 30th interrogatory deponent answers:

I know nothing in relation to the matters and things therein interrogated.

31st. To the 31st interrogatory deponent answers:

There were no guns on board belonging to said vessel. There were two shotguns on board, the property of the captain and myself.

32d. To the 32nd interrogatory deponent answers:

I know nothing — in relation to the ship and cargo than what I have already stated.

(S'd) SILVESTRE ASTEINZA.

35 Sworn to and subscribed before me this 4th day of May, A. D. 1898.

(S'd) J. OTTO,
Prize Commissioner.

36 District Court of the United States, Southern District of Florida. In Admiralty.

I, Eugene O. Locke, clerk of said court, hereby certify that the foregoing document of thirty-five (35) pages is a true copy of the record in the cause of The United States *vs.* Str. "Buenaventura" and cargo, prize, lately adjudicated in said court, and remaining on file in my office.

Witness my hand and the seal of said court this twenty-second day of July, in the year of our Lord one thousand eight hundred and ninety-eight, and of American Independence the one hundred and twenty-third.

{ Seal District Court of the United States, Southern District of Florida. }

EUGENE O. LOCKE, *Clerk.*

United States District Court, Southern District of Florida.

I, James W. Locke, judge of said court, hereby certify that Eugene O. Locke, whose own genuine signature appears above, is as he represents himself to be, clerk of said court, and his attestations as such are entitled to full faith and credit.

JAMES W. LOCKE, *Judge.*

37 *Opinion.*

U. S. District Court, Southern District of Florida.

THE UNITED STATES
vs.
THE SPANISH STEAMSHIPS "BUENA VENTURA," "PANAMA," "Catalina," "Miguel Jover," "Pedro," and "Guido" and Cargoes. } Prize.

The questions involved in these several cases, being of the same character, have been considered together.

Of these vessels the "Buena Ventura" cleared from the port of Scranton, Miss., on the 16th of April, 1898, and sailed with a cargo of lumber for Rotterdam the 19th of that month, and was captured in the straits of Florida, between Key West and Cuba, on the 22nd by the U. S. S. "Nashville;" the "Panama" cleared and sailed from New York for Havana with an assorted cargo on the 20th of the same month, and was captured on the 25th by the U. S. S. "Mangrove," while approaching that port; the "Catalina" and the "Miguel Jover," laden with cotton and staves, cleared from New Orleans on the 21st of the same month, and sailed the evening of the

same day for Barcelona and Genoa; the "Catalina" was captured by the U. S. S. "Detroit" and the "Miguel Jover" by the U. S. S. "Helena," both on the 24th; the "Pedro," which had sailed from Antwerp some time before, had been into Havana, had cleared for Santiago, Cuba, and was captured on the 22nd of the same month, about twelve miles from the port of Havana, by the U. S. S. "New York," and the "Guido," from Liverpool, bound for Havana by the way of Santander, Cuwana, and La Puebla, was captured on the 27th by the U. S. S. "Terror."

They are all Spanish vessels, sailing under the Spanish flag, with royal patents, officered and manned by Spaniards, and with the exception of the "Pedro" and "Guido" no question has been
38 raised as to their being enemy's property.

They were all merchant vessels, engaged in regular lines of commerce, and this, and the hardship and injustice of the captures before a declaration of war, has been strenuously urged in argument as contrary to the humane policy of our Government, in addition to the provisions of the President's proclamation.

The principles of the law of prize have been so often and so distinctly declared by the highest courts of all civilized countries that they need no extended review here. The law of prize is a law of war, of might, and of force, which is to be exercised at the order and behest of the Executive, and not upon the principles of policy or equity; and while prize courts, where questions of doubt arise, yield as far as possible to the claims of humanity and respect for personal rights, yet they cannot be controlled by such considerations.

The former rule of the law of prize was that the belligerent had a right to capture the property of the opposing belligerent or antagonist under any circumstances, and to injure him in any way by depriving him of his property.

That was the original practice, but it has been restricted by the gradual advance of civilization until, by the prize law of today, as accepted, the captor has the right, in the absence of any declaration of exemption by the political power, to capture, wherever and whenever found afloat, anything which belongs to or is the property of the enemy.

Whenever it is claimed that there is an exemption made by proclamation or by ordinance, the burden of proof is upon the claimant to show that the particular case comes within the exemption, and although such proclamation or ordinance is to be liberally construed in behalf of the claimants, there must be found therein sufficient language to justify the court in finding that the intention was to exempt from seizure the class of property under in-
39 vestigation. The language to justify an exemption must be found. It cannot be presumed from international history or policy nor from the principles of justice, generosity, or humanity.

The important questions in the cases now pending arise upon the construction of the proclamation of the President of the United States of April 26th, 1898.

As that is construed by the claimants of the several steamships, each one of them comes within some provision of this proclamation which exempts it from the liability of capture and condemnation, but as construed by the attorneys for the captors not one of them is so exempt.

The proclamation is as follows:

"By the President of the United States of America:

A Proclamation.

"Whereas, by an act of Congress approved April 25th, 1898, it is declared that war exists and that war has existed since the 21st of April, 1898, including said day, between the United States of America and the Kingdom of Spain; and

Whereas, it being desirable that such war should be conducted upon principles in harmony with the present views of nations and sanctioned by their recent practice, it has already been announced that the policy of this Government will be not to resort to privateering, but to adhere to the rules of the declaration of Paris:

Now, therefore, I, William McKinley, President of the United States of America, by virtue of the power vested in me by the Constitution and the laws, do hereby declare and proclaim:

1. The neutral flag covers enemy's goods, with the exception of contraband of war.

2. Neutral goods, not contraband of war, are not liable to confiscation under the enemy's flag.

3. Blockades in order to be binding must be effective.

4. Spanish merchant vessels in any ports or places within the United States, shall be allowed until May 21st, 1898, inclusive, for loading their cargoes and departing from such ports or places; and such Spanish merchant vessels, if met at sea by any United States ship, shall be permitted to continue their voyage, if, upon examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the above term: Provided, that nothing herein contained shall apply to Spanish vessels having on board any officer in the military or naval service of the enemy; or any coal (except such as may be necessary for their voyage) or any other article prohibited or contraband of war, or any dispatch of or to the Spanish government.

5. Any Spanish merchant vessel which, prior to April 21st, 1898, shall have sailed from any foreign port bound for any port or place in the United States, shall be permitted to enter such port or place, and to discharge her cargo and afterward forthwith to depart without molestation; and any such vessel, if met at sea by any United States ship, shall be permitted to continue her voyage to any port not blockaded.

6. The right of search is to be exercised with strict regard for the rights of neutrals, and the voyages of mail steamers are not to be interfered with, except on the clearest grounds of suspicion of a violation of law in respect of contraband or blockade.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington on the 26th day of April, in the year of our Lord one thousand eight hundred and ninety-
[SEAL.] eight, and of the Independence of the United States the one hundred and twenty-second.

WM. McKINLEY.

41 By the President:

ALVEY A. ADEE,

Acting Secretary of State."

Examining this proclamation in its several parts, we find, first, the simple declaration and announcement of a recognition of a condition of war existing since the 21st of April, 1898, as declared by the act of Congress of April 25th, 1898; second, a declaration of the desire that such war shall be conducted upon principles in harmony with the present views of nations and sanctioned by recent practice.

This being the declared intention of the Executive, it must be accepted to aid in construing the subsequent declaration- of the proclamation.

The first point in which the Executive desires to continue the practice and be in harmony with the views of nations in that there shall be no privateering; the second, that a neutral flag shall cover the enemy's goods, with the exception of contraband of war, and that neutral goods not contraband of war shall not be liable to forfeiture under the enemy's flag. So far it is very clear that the proclamation has followed the humane practice of all nations more recently established; but, reaching the fourth article of the proclamation, we find it absolutely necessary in these cases, in order to interpret and construe it according to the arguments of either the libellants or the defendants, to read into it some language determining the time at which Spanish merchant vessels should be "in any ports or places within the United States" to give them the right of being allowed until May 21st, 1898, for loading their cargoes and departing. There is no expression of any element of time in this connection to aid in the construction, but upon this depends the causes of the "Catalina" and of the "Miguel Jover," which cleared from New Orleans the evening of April 21st, 1898.

42 It is urged by the claimants that the intention of the proclamation was that the exemption should attach to all Spanish merchant vessels in harbor at the outbreak of the war, and that the words "at that date" or their equivalent should be — understood, while the counsel for the captors contend that there can be no retroactive effect of the proclamation, and the only word that could be — understood is "now."

Which of these views is in harmony with the present view of nations and sanctioned by their recent practice?

Formerly, at the outbreak of war, nations lost no time in seizing enemy's shipping found in their ports, although they had entered in good faith in time of peace; but modern usage condemns such a

breach of national good faith, and recent practice has been to give certain days of grace to shipping found within enemies' ports at the outbreak of war. In the Crimean war, of 1854, Russian vessels were allowed six weeks to leave British ports. In 1870 thirty days were allowed German vessels in French ports, and French vessels in German ports were allowed six weeks to leave. In 1897 (the Greeco Turkish war) fifteen days were allowed by each nation for the vessels of the opposite nation to clear with impunity. In each of these cases the immunity attached from the outbreak of the war.

Was it the intention of this proclamation to apply these days of grace to all vessels in ports of the United States at the outbreak of the war or to those so in port on the day of the actual issuance of the proclamation? If the latter construction is accepted, it certainly would not be in accordance with the present views of nations nor sanctioned by their recent acts. It would leave a space of five days after the commencement of hostilities when, according to such views and practice, they might be considered exempt from seizure and could safely leave port, but upon the issuing of such
43 proclamation became subject to seizure. If they were safe according to the present rule of civilized nations, certainly the issuing of the proclamation at a later day, without declaring that it should be retrospective, should not make them liable.

In the proclamation of the 22nd of April the President had declared that thirty days of grace should be given to neutral vessels found in blockaded ports. Can it be believed that he intended to change the number of days of grace from thirty, already named in one proclamation, to twenty-five in this? Is it not more reasonable to consider that the same number of days was intended, which, commencing at the outbreak of the war, would bring it to the 21st of May, the day named?

While it is true that the rule of construction generally is that statutes have no retrospective or retroactive effect, it is not without exceptions, and the principal question always is, What was the intention of the legislators?

It is contended that the vessels being captured before the proclamation issued, the rights of the captors attached; but if it was the intention to exempt all in port at the outbreak of the war, it is not considered that the attaching of any such right should influence the decision- in these cases. Giving the introductory language of the proclamation the force to which I consider it is entitled, I feel compelled to hold that the intention of the Executive was to fully recognize the recent practice of civilized nations and not to sanction or permit the seizure of the vessels of the enemy within the harbors of the United States at the time of the commencement of war, or to permit them to escape from ports to be seized immediately on entering upon the high seas, and that the fourth article should be held to apply to all Spanish merchant vessels in a harbor of the United States upon April 21st, 1898, and exempt them from seizure. This will effect the release of the "Catalina" and the "Miguel Jover."

In regard to the cargoes of such vessels it cannot be considered that it could be the intention of the Executive or the policy of any nation to permit vessels to take in their cargoes up to a certain time and leave the port free, and then have them seized so that the cargoes should be liable to condemnation. What makes the free vessel makes the free cargo, although it may be found to belong to the enemy.

The fifth article of this proclamation declares that any Spanish merchant vessel which prior to May 21st, 1898, shall have sailed from any foreign port bound to any port or place in the
44 United States shall be permitted to enter such port and discharge her cargo and afterwards to depart without molestation. This raises a question which is not without difficulty in the case against the "Pedro" and the "Guido."

The testimony shows that both these vessels were owned by a Spanish corporation of Bilboa, Spain, and were engaged in regular trade with outward cargoes from European—particularly Spanish—ports to the Cuban ports to discharge, thence to some port of the United States—usually Pensacola—for a load of lumber for the return voyage. The "Guido" had sailed from Liverpool by way of Santander, Corunna, and La Puebla and was bound for Havana. In her regular course, after she had touched at that and several of the Cuban ports, she would have proceeded to Pensacola, and she had among her papers a bill of health for that place, but there was no charter-party or certainty of her going there. She had no cargo for that or any other port of the United States.

The "Pedro," a vessel of the same line, had sailed from Antwerp with cargo destined for several Cuban ports. She had been into Havana, discharged some cargo and taken other on board, and was bound to Santiago. After she had touched there and one or two other Cuban ports for which she had cargo she was under charter to proceed to Pensacola to load lumber for some port in Europe. She had on board no cargo for Pensacola.

It is contended by the claimants of these two vessels that the fact that their ultimate destination, after stopping at the other ports, was a port of the United States to take in a cargo brings them within the provision of the fifth article of the proclamation, as being vessels which prior to April 21st, 1898, had sailed from a foreign port bound for a port or place of the United States, and extended and elaborate arguments were had and cases were cited upon the subject of continuing voyages and their termini. I do not consider that such a construction can be recognized as reasonable when applied to the circumstances of this case, nor that it can for a moment be con-
45 sidered to have been the intention of the proclamation when made.

The reasons for such exemption from seizure are twofold: First, it excuses a vessel which, ignorant of the condition of war, comes directly into the power of the enemy, and is therefore to that extent a protection to commerce, and tends to prevent a breaking up of commercial relations between nations upon the first, and perhaps unfounded, suspicion of unfriendly relations between them

Secondly, as the material increase of a nation's possession- is always desirable upon the outbreak of war, and the importations of foreign cargoes may well be considered to tend toward such increase, it is desirable to encourage this importation, although brought by ships of the enemy.

But neither of these reasons apply to the cases at bar. These vessels would have been informed of the condition of war long before approaching our shores—in fact, a state of war existed before the "Pedro" left Havana—and having no cargo to bring into this country they were only coming to take property away, and in the meantime carrying on commerce in the interest of the enemy between its ports and supplying it with necessary provisions with impunity.

It is also urged by the claimants of these vessels that, although they were owned by a Spanish corporation of Bilboa, La Flecha, the general managers of which were Spanish citizens and resided at Barcelona, a large portion of the stock of this corporation was owned by subjects of Great Britain, who had a lien on or equitable ownership of the rest of the stock; so that in reality the vessels were neutral property, and had only been put under the Spanish flag to take advantage of certain privileges given them in trading to the Spanish West Indies.

It has been repeatedly declared that the property of a house of trade established in an enemy's country is liable to condemnation as prize, whatever may be the domicile of the partners, and
46 this principle will apply with much greater force to the property of a corporation duly incorporated and acting under the laws of an enemy's country, regardless of the domicile of the individual stockholders or any equitable interest neutrals might have in the stock. A mortgage or equitable lien upon the vessel itself, if held by a neutral, could not protect her from seizure, and much less can an equitable interest in the stock of the corporation which is the owner. These vessels were owned by a Spanish corporation, sailing under a royal Spanish patent, flying the Spanish flag, officered and manned by Spanish citizens, nearly, if not quite, all of whom were registered as members of the Spanish naval reserve, and they must be taken and considered as in all respect- property of enemy and subject to forfeiture.

The "Panama" sailed from New York before the 21st of April, 1898, and was upon the high seas at that time and at the time of capture. The fact that there had been no formal proclamation or declaration of war before she had sailed or at the time she was captured, or that she at a recent date left a port of the United States, cannot be considered as exempting her from the liability of all enemy's property to capture unless coming directly within the language of the President's proclamation.

The practice of a formal proclamation before recognizing an existing war and capturing enemy's property has fallen into disuse in modern times, and actual hostilities may determine the date of the commencement of war, although no proclamation have *have* been issued, no declaration made, or no action of the legislative department of the government had. This date has been declared by the

act of Congress of April 25th, 1898, and by the proclamation of the President of the next day to have been April 21st, 1898, including that day; so that any Spanish property afloat captured from
47 that time became liable to condemnation unless exempt by the Executive proclamation.

In the case of the "Buena Ventura" it is shown by the evidence that she cleared from Scranton, Miss., with permission to touch at Newport News for coal on her voyage to Rotterdam. Although she was to touch there for that purpose, it was not a port of discharge, nor was she from a foreign port, and her case clearly does not come within the language of the proclamation. Had she been captured approaching Newport News for the purpose of coaling, even then there might have been some opportunity for argument that the permission to touch had given her encouragement, and it should in justice furnish the same protection as to a vessel coming from a foreign port; but that was not the case. When captured she must have been pursuing the same course she would have pursued had there been no intention to stop for coal, and neither such intention nor permission tended in any way to increase the liability of her capture. She was an enemy's vessel, found upon the high seas at the commencement of the war, and not coming within the exceptions of the proclamation.

Her cargo was shipped by a citizen of the United States to a neutral port, consigned partly to the shipper's order and partly to a citizen of Great Britain, and is unquestionably either neutral or the shipper's property. The suggestion that it should be condemned, although neutral, because found in an enemy's vessel and at the time of the capture there had been no proclamation issued declaring it not subject to condemnation, cannot be entertained for a moment. The policy and law declared in the Executive proclamation is considered to be the law by which this court is governed, whether the capture took place before or after it was issued. It is the existing law by which rights must be determined, and in this matter there can be no possible question of construction or intention.

The cargoes of the "Pedro" and the "Guido" appear from the testimony and papers found on board to have been mostly
48 shipped by neutrals to parties in the enemy's country. Such shipments are *prima facie* enemy's property and subject to condemnation, but such presumption can be overcome by evidence, and in those cases in which claims and test affidavits have been filed tending to show the ownership time will be given for further proof: but the property all being either perishable or subject to deterioration by delay, or such that the cost of keeping will be disproportionate to its value, an order of sale will issue and the claim stand against the proceeds of sale.

The "Panama," after touching at Havana, was bound to Vera Cruz, and a large portion of her cargo is shown to have been shipped to Mexico and consigned to residents and presumptively citizens of that Republic. That is all *prima facie* neutral property and will be released. The rest, shipped by merchants in New

York and consigned to parties in Havana, is presumably the property of the consignees, but where claims and test affidavits have been filed combatting that presumption, time for further proof will be given, as in the cases of the "Pedro" and the "Guido." When the property can be immediately restored to the claimants it will be so ordered, but otherwise it will be sold pending further proof, as the greater part, if not all, is liable to deterioration by the delay.

(S'd) JAMES W. LOCKE, *Judge.*

Filed July 13th, 1898. U. S. district court, southern district of Florida.

49 In the Supreme Court of the United States, October Term, 1898.

THE STEAMSHIP "BUENA VENTURA," &c., Appellant,
v.
THE UNITED STATES. } No. 350.

Stipulation.

It is hereby stipulated by counsel for the parties to the above-entitled cause that the following documents, being original exhibits sent up with the record herein, shall be printed as a part of the record on appeal, namely: (1) the bills of lading, (2) the receipt for duties and fees, (3) the certificate of payment of tonnage duties, (4) the bill of health, (5) the outward foreign manifest, (6) the coasting manifest, (7) the permit to proceed coastwise to lade for a foreign port, and (8) the charter party.

And it is hereby admitted by the claimant that the log book (Borrador de Bittacora), among said exhibits, on the double page 39, states in Spanish that on April 19, 1898, the vessel "sailed from Ship Island for Rotterdam (via Norfolk)," and that the last entry in the crew list (Rol de Navegacion; cover labelled "Vapor Espanol, Buena Ventura"), under the heading "Expediciones O De-
50 spachos," is a certificate in Spanish by the Spanish vice-consul at Pascagoula that on April 14, 1898, the vessel "left for Rotterdam via Norfolk."

J. PARKER KIRLIN,
Counsel for Appellant.
JOHN K. RICHARDS,
Solicitor General.

Dated May 1, 1899.

51 [Endorsed:] File No., 16,935. Supreme Court U. S., October term, 1899. Term No., 106. The Steamship "Buena Ventura," &c., app't, *vs.* The United States. Stipulation as to printing original exhibits and admissions as to entries in log book and crew list. Filed May 6, 1899.

(Here follow bills of lading marked pp. 52, 53, 54, 55, 56, and 57.)

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

58 Fourth series.

No. 521,086. Cat. No. 399.

Receipt for Duties and Fees.

Receipts may be demanded, and, when demanded, must be given as a matter of right, for any payments of money on account of customs or other dues to the United States.

☞ A receipt in this form must be given in every instance when moneys (other than tonnage duty) are paid at the custom-house.

☞ The person to whom this receipt is given is requested to countersign the stub and to inform the auditor for the Treasury Department in the event of his not doing so.

CUSTOM-HOUSE, PORT OF PASCAGOULA, *April* 14, 1898.

Vessel: Span. S. S. Buena Ventura.

Arrived: —— —, 189–.

	Dollars.	Cts.
For duties		
Fines, penalties, and forfeitures		
Storage, labor, and drayage		
Compensation of storekeepers		
Overtime of officers		
Immigrant fund		
Night and other special service		
Dead passengers		
Cording and sealing		
Miscellaneous customs receipts		
Official fees, viz: Surveys		
Foreign entry of vessels		
Foreign clearance of vessels		
Coastwise	2	20
Permits		
Bonds		
Entry of merchandise		
Official certificates		
Miscellaneous fees		
	$2	20

Received from J. de Luzarraga two dollars 20 cents in full of above.

{ Seal Deputy Collector of Customs, Port of Pascagoula, District of Pearl River, Miss. }

2—275

A. E. KREBS,
Dpy. Collector.

[Printed across face:] This form of receipt must not be used for tonnage duty.

Filed May 5, 1898.

E. O. LOCKE, *Clerk.*

[On back.]

Extract from Act of June 10, 1890.

SEC. 14. That the decision of the collector as to the rate and amount of duties chargeable upon imported merchandise, including all dutiable costs and charges, and as to all fees and exactions of whatever character (except duties on tonnage), shall be final and conclusive against all persons interested therein, unless the owner, importer, consignee, or agent of such merchandise, or the person paying such fees, charges, and exactions other than duties, shall, within ten days after "but not before" such ascertainment and liquidation of duties, as well in cases of merchandise entered in bond as for consumption, or within ten days after the payment of such fees, charges, and exactions, if dissatisfied with such decision give notice in writing to the collector, setting forth therein distinctly and specifically, and in respect to each entry or payment, the reasons for his objections thereto, and if the merchandise is entered for consumption shall pay the full amount of the duties and charges ascertained to be due thereon. * * *

2—275

Receipt for custom dues.

59

Art. 179, Customs Regulations of 1892. Cat. No. 491. No. 76076.

Certificate of Payment of Tonnage Duty.

(To be issued, in all cases, under seals of collector and naval officer.)

U. S. CUSTOM-HOUSE, PORT OF BRUNSWICK, GA.

I hereby certify that on this 9 day of Sept'r, eighteen hundred and ninety-six, the tonnage duty of 3 cents per ton, imposed by the provisions of section 14 of the act entitled "An act to remove certain burdens on the American merchant marine and encourage the American foreign-carrying trade, and for other purposes," approved

June 26, 1884, was paid on the * Span. S. S. Buena Ventura, J. de Luzarraga, master, of † Bilboa, by A. F. Thurbell, as per American admeasurement, 1,332 tons, amounting to 39 dollars 96 cents.

The above payment was made on entry from Cienfuegos on the 9 day of Sept'r, 1897, being the first payment on entry in the year beginning ‡ Sept. 9, 1897.

Schedule of Payments.

Number.	Date.	Tons.	Rate.	Amount.	Port of entry.
1st	Sept'r 9, '97	1,332	3	$39 96	Brunswick, Ga.
2d					
3d					
4th					
5th					

[Seal Collector of Customs, Port of Brunswick, District of Brunswick.]

MALLERY P. KING,
D. Collector.

——, *Naval Officer.*

[Printed across face:] Show this whenever vessel enters within tonnage year to avoid overpayment of tax.

Filed May 5, 1898.

E. O. LOCKE, *Clerk.*

[On back.]

Notice.

In case of dissatisfaction with the collector's ruling, application for refund may be made within one year, under section 26, act June 26, 1884.

2—843

* Here give nationality, class, and name of vessel.
† Here give her home port.
‡ Tonnage year begins at first entry of vessel when tax is due.

Art. 132, Customs Regulations of 1892. (Cat. No. 494.)

THE UNITED STATES OF AMERICA.

[Vignette.]

Bill of Health.

CUSTOM-HOUSE, PORT OF PASCAGOULA.

To all to whom these presents shall come:

Whereas the Span. S. S. Buena Ventura, of Bilbao, of which J. de Luzarraga is master, is now ready to depart from the port of Pascagoula, Miss., for Norfolk, Va., and other places beyond the sea, with thirty-four (34), all told, persons, including the master of the said vessel:

We therefore by these presents do make known and certify that no plague nor any other dangerous or contagious disease at present exists in the said port.

Given under *our* hands and seals of office this 14th day of April, 1898, and in the 122 year of the Independence of the United States of America.

{Seal Deputy Collector of Customs, Port of Pascagoula, District of Pearl River, Miss.}

A. E. KREBS,
Dpy. Collector of Customs.

No naval officer.

2—122

Filed May 5, 1898.

E. O. LOCKE, *Clerk.*

[Endorsed:] (Cat. No. 494.) District of Pearl River, port of Pascagoula, April 14, 1898. Bill of health. * Span. S. S. † Buena Ventura, J. de Luzarraga, master. Bound for Norfolk. Number of persons, 34.

2—122

---

* Insert nationality and rig of vessel.
† Insert name of vessel.

61 1867-'68—*New Form—Outward Foreign Manifest.*

Report and manifest of the cargo laden at the port of Pascagoula, U. S. A., on board the Spanish steamship "Buena Ventura," whereof —— Luzarraga is master, bound for Rotterdam, Holland.

PASCAGOULA, MISS., *April* —, 1898.

Numbers.	Packages and contents.	Timber.		Lumber.		Total value.	To be landed at—
		Cubic feet.	Value.	Sup'l feet.	Value.		
81435	Eighty-one thousand four hundred & thirty-five pcs. lumber.	.....	.....	872,235	.....	$10,902 93	Rotterdam, Holland.

Cleared by—

WM. S. KEYSER & CO.,
Pascagoula, Miss.

Filed May 5, 1898.

E. O. LOCKE, *Clerk.*

[On back.]

Master's Oath on Clearing Outward.

DISTRICT AND PORT OF PASCAGOULA:

I, —— Luzarraga, master or conductor of the Span. S. S. "Buena Ventura," bound from the port of Pascagoula to Rotterdam, Holland, do solemnly, sincerely, and truly swear that the manifest of the cargo on board the said vessel, now delivered by me to the collector of this district and subscribed with my name, contains, according to the best of my knowledge and belief, a full, just, and true account of all the goods, wares, and merchandise now actually laden on board the said vessel or vehicle and of the value thereof, and if any other goods, wares, or merchandise shall be laden or put on board the said vessel previous to her departure from this port I will immediately report the same to the collector. I do also swear that I verily believe the duties on all foreign merchandise therein specified have been paid or secured according to law, and that no part thereof is intended to be relanded within the United States, and that if by distress or other unavoidable accident it shall become necessary to reland the same I will forthwith make a just and true report thereof to the collector of the customs of the district wherein such distress or accident may happen, and that said cargo is truly intended to be landed in the port of Rotterdam, Holland, so help me God.

J. DE LUZARRAGA, *Master.*

Sworn to before me this 14th day of April, 1898.

{ Seal Deputy Collector of Customs, Port of Pascagoula, District of Pearl River, Miss. }

A. E. KREBS,
Dpy. Collector.

Manifest #4.

Manifest of the cargo on board of the Span. S. S. Buena Ventura, of the burthen of 1,332 tons, whereof J. de Luzarraga is master, bound from Pascagoula, Miss., to Norfolk, Va.

No. of entries.	Names of shippers.	Residence of shippers.	Marks and numbers.	No. of packages.	Packages, with their contents.	Names of consignees.	Residence of consignees.
			81,435	pieces	lumber—872,235 sup. ft.		

Cat. No. 504¾.
Art. 149, Customs Regs., 1892, and dep't cir. 84 of 1896, ed. 1, 19, '97, 2,500.

Permit to Proceed Coastwise to Lade for a Foreign Port.

UNITED STATES CUSTOMS SERVICE, PORT OF PASCAGOULA.

J. de Luzarraga, master of the Span. S. S. Buena Ventura, of Bilbao, having sworn, as the law directs, that there are not laden on board the said vessel any articles or cargo whatever other than sea stores and the cargo specified upon the manifest now exhibited, permission is hereby granted to the said vessel to proceed from this port to Norfolk, in the district of Norfolk and State of Virginia, to lade bunker coal. Any merchandise laden on the vessel at this port for export in her will .... be included in the export returns to the Treasury Department from this office.

(Write "not," if necessary.)

Given under my hand, at the custom-house, this 14th day of April, 1898.

[Seal Deputy Collector of Customs, Port of Pascagoula, District of Pearl River, Miss.]

A. E. KREBS,
Deputy Collector.

Fees, $2 for foreign vessel.

Filed May 5, 1898.

E. O. LOCKE, *Clerk.*

[On back.]

I, J. de Luzarraga, do swear the within is a true manifest of the whole cargo of the said S. S. Buena Ventura, and that such goods, wares, and merchandise of a foreign manufacture as therein specified were legally imported, and the duties thereupon have been duly paid or secured to be paid according to law.

Custom-house, Pascagoula, Miss., this 14th day of April, 1898.

J. DE LUZARRAGA.

I certify that the above oath was taken and subscribed before me and a duplicate delivered according to law.

A. E. KREBS,
Dpy. Collector.

DISTRICT OF PEARL RIVER, PORT OF PASCAGOULA,
14th Day of April, 1898.

J. de Luzarraga, having sworn, as the law directs, to the within manifest, consisting of lumber & ship stores, articles of entry, and delivered a duplicate thereof, permission is hereby granted to the said S. S. Buena Ventura to proceed to Norfolk, Va., to lade bunker coal.

Given under *our* hands, at the custom-house, Pascagoula, the day and year above mentioned.

{Seal Deputy Collector of Customs, Port of Pascagoula, District of Pearl River, Miss.}

A. E. KREBS, *Dpy. Coll.*

Coasting manifest #1 & clearance paper.

(Here follows agreement marked p. 63.)

Endorsed on cover: Case No. 16,935. S. Florida D. C. U. S. Term No., 106. The Steamship "Buena Ventura," Juan de Luzarraga, claimant, appellant, *vs.* The United States. Filed July 27th, 1898.

INDEX.

PAGE

Statement 1

Proclamation of April 26, 1898 11

POINTS:

I. The *Buena Ventura* was exempt from condemnation by the terms of the President's Proclamation of April 26th, 1898.. 14

(1.) The ship had sailed from a foreign port prior to April 21st, on the voyage during which she was captured, and, at the time of capture, was bound to a port or place in the United States 14

(*a.*) The charter-party provided for such a voyage... 14

(*b.*) Testimony of the witnesses shows she was bound to Norfolk 16

(*c.*) Her Bill of Health recited that she was bound to Norfolk 16

(*d.*) She carried a coasting manifest with permission to proceed to Norfolk for bunker coal 16

(*e.*) Her clearance from the port of Pascagoula was for Norfolk 17

(*f.*) Bills of lading and charter-party contained liberty to stop at Norfolk 17

(*g.*) Legal effect of the terms of the charter-party considered 18

(*h.*) District Judge's reasons for condemnation considered 20

(*i.*) Case in effect determined by the decision in the *Argo* 23

(2.) In determining the right of the *Buena Ventura* to exemption from condemnation under this paragraph of the proclamation, Court should interpret it liberally... 26

(*a.*) Principles and practices recognized by the Preamble 26

(*b.*) Language of the proclamation to be construed liberally in favor of captured vessels 29

PAGE

(c.) Proclamation should be construed with regard to our traditional policy towards the question of the exemption of private property at sea from capture during war 30

II. The *Buena Ventura* was exempt from condemnation by the Fourth Article of the Proclamation 33

(a.) This section gave freedom and safe conduct to all Spanish merchant vessels in our ports on April 26th 34

(b.) If, however, the proclamation be considered ambiguous, then a liberal construction of it should be adopted, having regard to the purpose and intent of the whole proclamation, its objects and aims, and designed to give effect to such objects, rather than to read into it a date (April 21st) which would defeat them 36

(c.) But if the Fourth Section of the Proclamation must be limited to vessels which were in ports or places of the United States on April 21st, the *Buena Ventura* was in such a place, within the meaning of the proclamation 38

III. The Coastwise Clearance granted to the steamer by the Collector of the Port of Pascagoula was in legal effect a safe conduct, permission or license to the vessel to proceed to Norfolk, which, having been acted and relied upon, was not revoked by the outbreak of war, unknown to the master, during the vessel's passage, but should have protected her from capture and condemnation 44

IV. The restoration of the *Buena Ventura* should be accompanied with damages for unlawful capture and condemnation 49

(a.) The capture was premature, and out of accord with recent practice 49

(b.) In view of the Coastwise permit, there was no probable cause for detention 53

(c.) There was no probable cause for the continuance of the proceedings after the proclamation of April 26th, 1898 53

PAGE

LAST POINT. The decree of the Court below should be reversed and an order made for further proofs or for the restoration of the proceeds of the ship, with damages and costs ... 54

APPENDIX A. Queen's Proclamation, March 28th, 1854 55
" B. " " March 29th, " 56
" C. French " March 27th, " 57
" D. Russian " April 19th, " 58

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1899.

The Steamship BUENA VENTURA, JUAN DE LUZARRAGA, Claimant-Appellant, AGAINST THE UNITED STATES, Libelant-Appellee.	No. 106. (Prize.)

BRIEF FOR THE BUENA VENTURA.

Statement.

This is an appeal from a decree of the District Court of the United States for the Southern District of Florida, entered May 27, 1898, under which the steamship *Buena Ventura* was condemned as lawful prize of war (Rec., p. 9). The grounds of the condemnation, as stated in the final decree, were:

"That the said steamship *Buena Ventura* was enemy's property; and was upon the high seas, and not in any port or place of the United States upon the outbreak of the war, and was liable to condemnation and seizure" (p. 9).

The proofs upon which the condemnation was rested consisted of the answers given by Juan de Luzarraga, the master, and Silvestre Asteinza, the mate of the *Buena Ventura*, to the standing interrogatories, and of the documents seized on board the ship by the captors. By stipulation between the Government and the claimant (Rec., p. 32), certain of these documents, certified here from the Court below, are printed as part of the record on appeal (Rec., pp. 32–39).

From this evidence, it appeared that the *Buena Ventura* was a Spanish merchant vessel, owned by the firm of Larrinaga & Company, which, for a number of years, has had a commercial domicile in England. Some of the members of this firm resided in Liverpool, and others in Spain, but all were Spanish subjects. She was engaged exclusively in the carriage of cargoes, and at the time of her capture on April 22, 1898, was making a voyage under a charter-party which had been concluded in Liverpool March 23, 1898 (Rec., pp. 38–39).

This contract recited that the vessel was "now ready to leave Cuba," and provided that she should proceed thence with all convenient speed to Ship Island, Miss., and there load a cargo for Rotterdam. She had so proceeded, and had arrived at Ship Island on or before the 31st of March, and between that date and the 13th of April, had taken on board a cargo of lumber in accordance with the contract.

The charter gave the vessel liberty to stop at any port or ports on the voyage for coal and/or cargo (*clause* 2), and at the time of her capture she was bound for Norfolk, Virginia, to take in bunker coals. She had left Ship Island on the 19th of April, and sailed on a straight course from about eighteen miles off the lighthouse at Chandeleur, La., to Tortugas, and about 7.30 o'clock on the morning of the 22d of April was proceeding along close to the Florida Reefs, when she was captured, about eight or nine miles from Sand Key Light, near Key West, by the gunboat *Nashville*, and brought into the port of Key West as a prize. The shot that stopped her was the first that was fired in the war.

The steamer made no resistance at the time of her capture (Ans. 3rd Int., p. 18; Ans. 29th Int., p. 20). There were no military or naval officers or other passengers on board of her (Ans. 26th Int., pp. 20, 23), and she carried no arms or munitions of war (Ans. 31st Int., pp. 20, 23).

The vessel was libeled in the District Court for the Southern District of Florida, on the 23d of April, 1898. The libel alleged that the *Buena Ventura* had been captured by the United States ship of war *Nashville*, on the 22d of April, on the high seas, as prize of war; that the vessel and her cargo had been brought into port at the

harbor of Key West, and State of Florida, within the jurisdiction of the Court, and that both were lawful prize of war, and subject to be condemned and forfeited to the United States as such (Rec., p. 1).

Process under the libel was executed on the same day by reading it to the master of the vessel, and posting two copies in public places at Key West, and also by publication (Rec., p. 3). This process cited and admonished "all persons whomsoever having any right, title, claim or interest in or to the said steamer *Buena Ventura*, to appear at an admiralty session of said Court to be held in the Court Rooms of said Court, at Key West, in said District, on Monday, the 9th of May, A. D. 1898, at 10.30 o'clock in the forenoon of that day, to show cause, if any they have, why prize money should not be decreed according to the prayer of the libelant, and to attend upon every session of said Court from that time held until a final decree shall be rendered in the premises" (Rec., p. 3).

The time for the presentation of claims having been extended, the master of the vessel, Juan de Luzarraga, intervening as bailee for the interest of the owners, filed a claim to the vessel on May 18, 1898, denying that she was lawful prize, and praying that she should be restored, with damages and costs (p. 6).

On the same day he filed a test affidavit (pp. 7 and 8), in which the circumstances of the voyage and of the capture were set forth, and the suggestion was made that the vessel was exempt from capture and condemnation by the terms of a Proclamation issued by the President on April 26, 1898, and by the general prize law, as administered in the United States.

The circumstances which led up to this capture appear in certain acts of the Congress and of the Executive Departments of the Government, to which it will be convenient here to refer.

On April 20, 1898, the Congress passed, and the President approved, the following joint resolution:

"(No. 24.) Joint resolution for the recognition of the independence of the people of Cuba, demanding that the Government of Spain relinquish its authority and govern-

ment in the Island of Cuba, and to withdraw its land and naval forces from Cuba and Cuban waters, and directing the President of the United States to use the land and naval forces of the United States to carry these resolutions into effect.

"Whereas the abhorent conditions which have existed for more than three years in the Island of Cuba, so near our own borders, have shocked the moral sense of the people of the United States, have been a disgrace to Christian civilization, culminating, as they have, in the destruction of a United States battle ship, with two hundred and sixty-six of its officers and crew, while on a friendly visit in the harbor of Havana, and cannot longer be endured, as has been set forth by the President of the United States in his message to Congress of April eleventh, eighteen hundred and ninety-eight, upon which the action of Congress was invited: Therefore,

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,*

"FIRST.—That the people of the Island of Cuba are, and of right ought to be, free and independent.

"SECOND.—That it is the duty of the United States to demand, and the Government of the United States does hereby demand, that the Government of Spain at once relinquish its authority and government in the Island of Cuba and withdraw its land and naval forces from Cuba and Cuban waters.

"THIRD.—That the President of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States, to such extent as may be necessary to carry these resolutions into effect.

"FOURTH.—That the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction, or control over said Island except for the pacification thereof, and asserts its determination, when that is accomplished, to leave the government and control of the Island to its people."

"Approved April 20, 1898" (30 *Stat. at Large* Pt. II., p. 738).

Upon this resolution being communicated to the Spanish Minister in Washington, he immediately demanded his passports in the following letter:

"WASHINGTON, April 20.

"Mr. SECRETARY:

"The resolution adopted by the Congress of the United States of America and approved to-day by the President is of such a nature that my permanence in Washington becomes impossible, and obliges me to request of you the delivery of my passports. The protection of the Spanish interests will be intrusted to the French Ambassador and to the Austro-Hungarian Minister. On this occasion, very painful to me, I have the honor to renew to you the assurances of my highest consideration.

"LOUIS POLO Y BERNABÉ."

"To HON. JOHN SHERMAN,
Secretary, &c.

(*Foreign Relations*, 1898).

On the same day, the Secretary of State sent the Spanish Minister his passport, in the following words:

"UNITED STATES OF AMERICA, DEPARTMENT OF STATE.

"*To all to Whom These Presents Shall Come.*

"GREETING: Know ye that the bearer hereof, Senor Don Louis Polo y Bernabe, Envoy Extraordinary and Minister Plenipotentiary of Spain to the United States, is about to travel abroad, accompanied by his family and suite. These are therefore to request all officers of the United States, or any State thereof, to permit him to pass freely, without let or molestation, and to extend to him all friendly aid and protection in case of need.

"In testimony whereof, I, John Sherman, Secretary of State of the United States of America, have hereunto set my hand and caused the seal of the Department of State to be affixed at Washington this twentieth day of April, A. D. 1898, and of the independence of the United States of America the one hundred and twenty-second.

[SEAL.] "JOHN SHERMAN."

On April 20, 1898, the text of the above resolution of Congress, passed on that day, was cabled to the United States Minister at Madrid, together with the following despatch:

"To WOODFORD, Minister, Madrid:

"You have been furnished with the text of a joint resolution voted by the Congress of the United States on the 19th inst., approved to day, in relation to the pacification of the island of Cuba. In obedience to that act the Presi-

dent directs you to immediately communicate to the Government of Spain said resolution, with the formal demand of the Government of the United States that the Government of Spain at once relinquish its authority and government in the island of Cuba and Cuban waters. In taking this step, the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction or control over said island, except for the pacification thereof, and asserts its determination when that is accomplished to leave the government and control of the island to its people, under such free and independent government as they may establish.

"If by the hour of noon on Saturday next, the 23d of April, instant, there be not communicated to this Government by that of Spain a full and satisfactory response to this demand and resolution whereby the ends of peace in Cuba shall be assured, the President will proceed without further notice to use the power and authority enjoined and conferred upon him by the said joint resolution to such extent as may be necessary to carry the same into effect.

"SHERMAN."

(*Foreign Relations*, 1898).

The reply of the Minister at Madrid was received on April 21, 1898, and was as follows:

"SHERMAN, Washington:

"Early this (Thursday) morning, immediately after the receipt of your open telegram, and before I had communicated same to Spain, the Spanish Minister of Foreign Affairs notified me that the diplomatic relations are broken between the two countries, and that all official communications between their respective representatives have ceased. I accordingly asked for safe passports. Turn legation over to British Embassy and leave for Paris this afternoon. Have notified Consuls.

"WOODFORD."

(*Foreign Relations*, 1898).

The letter from the Spanish Minister of Foreign Affairs, to which reference is made in the foregoing telegram, was in these words:

"MADRID, April 21, 1898.

"Hon. STEWART L. WOODFORD,

"Minister of the United States of America.

"Dear Sir: In compliance with a painful duty I have the honor to inform Your Excellency that the President

having approved a resolution of both Chambers of the United States, which in denying the legitimate sovereignty of Spain and threatening an immediate armed intervention in Cuba, is equivalent to an evident declaration of war, the Government of His Majesty has ordered its Minister in Washington to withdraw without loss of time from the North American territory, with all the *personnel* of the Legation.

"By this act the diplomatic relations which previously existed between the two countries are broken off, all official communications between their respective representatives ceasing, and I hasten to communicate this to Your Excellency in order that on your part you may make such dispositions as seem suitable.

"I beg Your Excellency to acknowledge the receipt of this note at such time as you deem proper, and I avail myself of this opportunity to reiterate to you the assurances of my distinguished consideration.

"P. GULLON."

(*Foreign Relations*, 1898).

On this date instructions were given by the Secretary of the Navy to the Commander-in-Chief of the North Atlantic squadron to blockade certain ports in Cuba:

"WASHINGTON, April 21, 1898.

"SIR,—The Department's instructions of April 6 are modified as follows: You will immediately institute a blockade of the north coast of Cuba, extending from Cardenas on the east to Bahia Honda on the west; also, if in your opinion your force warrants, the port of Cienfuegos, on the south side of the island. It is considered doubtful if the present force at your command would warrant a more extensive blockade.

"It should be borne in mind that whenever the Army is ready to embark for Cuba the Navy will be required to furnish the necessary convoy for its transports. For this reason it does not seem desirable that you should undertake at present to blockade any more of the island than has been indicated. It is believed that this blockade will cut off Havana almost entirely from receiving supplies from the outside.

"The Navy Department is considering the question of occupying the port of Matanzas by a military force large enough to hold it and to open communications with the insurgents, and this may be done at an early date, even before the main party of the Army is ready to embark. If this operation is decided upon, you are directed to co-

operate with the Army and assist with such vessels as are necessary to cover and protect such a movement.

"If you obtain any information of the movements of Spanish ships of war in any part of the West Indies, you will, if practicable, inform the Department by telegraph of such movements.

"In conducting such other operations as you may deem desirable, you will be governed by the instructions contained in the Department's letter of April 6.

"The Department does not wish the defenses of Havana to be bombarded or attacked by your squadron.

"Very respectfully,

JOHN D. LONG,
Secretary.

"Commander in Chief,
"U. S. Naval Force, North Atlantic Station."

(*Appendix to the report of the Chief of the Bureau of Navigation*, 1898, p. 175.)

On April 22d the President publicly proclaimed this blockade:

"*By the President of the United States:*

A PROCLAMATION.

"Whereas, by a joint resolution passed by the Congress and approved April 20, 1898, and communicated to the government of Spain, it was demanded that said government at once relinquish its authority and government in the island of Cuba and withdraw its land and naval forces from Cuba and Cuban waters, and the President of the United States was directed and empowered to use the entire land and naval forces of the United States and to call into the actual service of the United States the militia of the several States to such an extent as might be necessary to carry said resolution into effect; and

"Whereas, in carrying into effect said resolution, the President of the United States deems it necessary to set on foot and maintain a blockade of the north coast of Cuba, including all the ports on said coast between Cardenas and Bahia Honda, and the port of Cienfuegos, on the south coast of Cuba:

"Now, therefore, I, William McKinley, President of the United States, in order to enforce the said resolution, do hereby declare and proclaim that the United States of America have instituted and will maintain a blockade of the north coast of Cuba, including ports on said coast between Cardenas and Bahia Honda and the port of Cienfuegos, on the south coast of Cuba, aforesaid, in pursuance of the laws of the United States and the law

of nations applicable to such cases. An efficient force will be posted, so as to prevent the entrance and exit of vessels from the ports aforesaid. Any neutral vessel approaching any of said ports or attempting to leave the same without notice or knowledge of the establishment of such blockade will be duly warned by the commander of the blockading forces, who will indorse on her register the fact and the date of such warning, where such indorsement was made; and if the same vessel shall again attempt to enter any blockaded port she will be captured and sent to the nearest convenient port for such proceedings against her and her cargo as prize, as may be deemed advisable.

"Neutral vessels lying in any of said ports at the time of the establishment of such blockade will be allowed thirty days to issue therefrom.

"In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed. Done at the City of Washington this 22d day of April, A. D. 1898, and of the Independence of the United States the one hundred and twenty-second.

"WILLIAM MCKINLEY.

"By the President.

"JOHN SHERMAN,

"Secretary of State."

The blockade was instituted on April 22d. (*Appendix to Report of the Chief of the Bureau of Navigation*, 1898, pp. 167–8).

On April 23d the Spanish Royal decree was issued, in which it was said:

"ART. I. The state of war existing between Spain and the United States terminates the Treaty of Peace and Friendship of the 27th October, 1795, the Protocol of the 12th January, 1877, and all other agreements, compacts and conventions in force *up to the present* between the two countries" (*Gaceta de Madrid*, 24 Apl., 1898; *London Gazette*, May 3, 1898).

On April 25th, the President addressed a message to the Congress, with which he transmitted "for its consideration and appropriate action" the foregoing correspondence, and a notification that he had declared the blockade of certain Cuban ports, adding:

"In view of the measures so taken, and with a view to

the adoption of such other measures as may be necessary to enable me to carry out the expressed will of the Congress of the United States in the premises, I now recommend to your Honorable body the adoption of a joint resolution declaring that a state of war exists between the United States of America and the Kingdom of Spain, and I urge speedy action thereon, to the end that the definition of the international status of the United States as a belligerent power may be made known and the assertion of all its rights and the maintenance of all its duties in the conduct of a public war may be assured" (*Messages and Papers of the Presidents*, Vol. 10, p. 154).

On the same day the Congress passed, and the President approved the following:

"AN ACT DECLARING THAT WAR EXISTS BETWEEN THE UNITED STATES OF AMERICA AND THE KINGDOM OF SPAIN.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:*

"FIRST.—That war be, and the same is hereby, declared to exist, and that war has existed since the twenty-first day of April, *anno domini* eighteen hundred and ninety-eight, including said day, between the United States of America and the Kingdom of Spain.

"SECOND.—That the President of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States to such extent as may be necessary to carry this Act into effect.

"Approved April 25, 1898."

(30 *Stat. at Large, Pt.* 2, *Ch.* 189.)

On April 26th, 1898, the President issued the proclamation of war referred to in the claim and test affidavit herein, which was in these terms:

[No. 8.]

"*By the President of the United States of America:*

"A PROCLAMATION.

"WHEREAS, by an act of Congress, approved April 25, it is declared that war exists and that war has existed since the 21st day of April, A. D. 1898, including said day, between the United States of America and the Kingdom of Spain; ar

"WHEREAS, it being desirable that such war should be conducted upon principles in harmony with the present views of nations and sanctioned by their recent practice, it has already been announced that the policy of this government will be not to resort to privateering, but to adhere to the rules of the Declaration of Paris:

"Now, therefore, I, William McKinley, President of the United States of America, by virtue of the power vested in me by the Constitution and the laws, do hereby declare and proclaim:

"1. The neutral flag covers enemy's goods, with the exception of contraband of war.

"2. Neutral goods, not contraband of war, are not liable to confiscation under the enemy's flag.

"3. Blockades in order to be binding must be effective.

"4. Spanish merchant vessels in any ports or places within the United States, shall be allowed till May 21, 1898, inclusive, for loading their cargoes and departing from such ports or places, and such Spanish merchant vessels, if met at sea by any United States ship, shall be permitted to continue their voyage if, on examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the above term; *provided*, that nothing herein contained shall apply to Spanish vessels having on board any officer in the military or naval service of the enemy, or any coal (except such as may be necessary for their voyage), or any other article prohibited or contraband of war, or any despatch of or to the Spanish government.

"5. Any Spanish merchant vessel which, prior to April 21, 1898, shall have sailed from any foreign port, bound for any port or place in the United States, shall be permitted to enter such port and to discharge her cargo, and afterward forthwith to depart without molestation; and any such vessel, if met at sea by any United States ship, shall be permitted to continue her voyage to any port not blockaded.

"6. The right of search is to be exercised with strict regard for the rights of neutrals, and the voyages of mail steamers are not to be interfered with except on the clearest grounds of suspicion of a violation of law in respect of contraband or blockade.

"In witness whereof I have hereto set my hand and caused the seal of the United States to be affixed.

"Done at the City of Washington, on the twenty-sixth day of April, in the year of our Lord
[SEAL.] one thousand eight hundred and ninety-eight, and of the independence of the United States the one hundred and twenty-second.

"WILLIAM MCKINLEY.

"By the President.

"ALVEY A. ADEE,

"Acting Secretary of State."

(30 *Statutes at Large*, p. 1770.)

On the day this proclamation was issued (April 26th) the *Buena Ventura* was in the port of Key West, and she was not within the class of vessels excluded from the privilege and immunity granted by the fourth section (Ansrs. to 26th and 31st Ints., pp. 20, 23).

The case was heard below by the Hon. James W. Locke, District Judge, in the latter part of May, 1898, and was decided in an oral opinion, delivered May 27th, which also disposed of the cases of the *Panama*, *Catalina*, *Miguel Jover*, *Pedro* and *Guido*, and their cargoes (Rec., p. 9). The opinion of the Judge was subsequently reduced to writing, and was filed July 13, (pp. 24-32).

The vessel was sold under the final decree entered on

May 27th (p. 9), and her proceeds were deposited to abide the event of this appeal. The cargo was released.

The claimant, Juan de Luzarraga, duly appealed to this Court, from that part of the decree which condemned the ship, and assigned the following errors (pp. 10 and 11):

"1st. For that the Court held and decided that the *Buena Ventura* was lawful prize of war.

"2d. For that the Court omitted and refused to hold that the *Buena Ventura* was not lawful prize of war.

"3d. For that the Court omitted and refused to find that the *Buena Ventura* was privileged and exempt from capture and condemnation as prize under and by virtue of the President's proclamation issued April 26, 1898.

"4th. For that the Court omitted and refused to hold that the *Buena Ventura* was privileged and exempt from capture and condemnation under the fifth article of the President's proclamation, by reason of the fact that she was bound to a port or place in the United States and had sailed on her then voyage from a foreign port prior to April 21, 1898.

"5th. For that the Court omitted and refused to find that the *Buena Ventura* was exempt from capture and condemnation by reason of the fact that her cargo had been taken on board and she had departed therewith from a port of the United States prior to May 21, 1898.

"6th. For that the Court omitted and refused to hold that the vessel was privileged and exempt from condemnation by reason of the fact that she was in a port or place of the United States on April 26, 1898, and was not within the classes of vessels excepted from the privileges accorded by the fourth article of the proclamation.

"7th. For that the Court omitted and refused to find that the *Buena Ventura* was in a place within the United States on April 21st and April 22d, at the time of her capture, and hence was privileged and exempt from capture and condemnation under the fourth article of the President's proclamation."

POINTS.

I.

The Buena Ventura was exempt from condemnation by the terms of the fifth section of the President's proclamation of April 26, 1898.

The parts of the proclamation material to this point are as follows:

"Whereas, it being desirable that such war should be conducted upon principles in harmony with the present views of nations as sanctioned by their recent practice, it has already been announced that the policy of this government will be not to resort to privateering but to adhere to the rules of the Declaration of Paris;

"Now, therefore, I, WILLIAM M'KINLEY, President of the United States of America, by virtue of the power vested in me by the constitution and laws, do hereby declare and proclaim. * * *

"(5) Any Spanish merchant vessel which prior to April 21st, 1898, shall have sailed from any foreign port bound for any port or place in the United States shall be permitted to enter such port and to discharge her cargo and afterward forthwith to depart without molestation; and any such vessel if met at sea, by any United States ship, shall be permitted to continue her voyage to any port not blockaded" (30 *Stat.*, p. 1770; *ante* p. 10).

(**1**.) It is contended by the appellant that the *Buena Ventura* had sailed from a foreign port prior to April 21, 1898, on the voyage during which she was captured, and that at the time of her capture, she was bound for a port or place in the United States within the meaning of this provision of the proclamation.

These facts appear from the evidence of the witnesses and from the captured papers.

(**a**.) Her charter-party provided for such a voyage.

In answer to the fifteenth standing interrogatory, the master testified (p. 17):

"The ship, at the time she was seized, was under a charter signed for the voyage. I gave it up with the other papers to the capturing ship."

This charter party (following p. 38) contained these provisions:

"LIVERPOOL, 23rd March, 1898.

"It is this day mutually agreed between Messrs. Larrinaga & Co. (owners) of the good steamship called *Buena Ventura*, under the Spanish flag, of 1,151 tons net register measurement, or thereabouts, and classed.....now ready to leave Cuba, and W. S. Keyser & Co., merchants of Pensacola, Fla., &c. * * *

"That the said vessel shall with all convenient speed sail and proceed to Ship Island, or as near thereto as she may safely get, and (being in hull, machinery, tackle and apparel, tight, staunch and strong, and in every way fitted for the voyage) there load (always afloat) from the said merchants, their agents or assigns, as necessary, a full and complete cargo, to consist of deals and /or boards, at merchant's option, which said merchants bind themselves to ship not exceeding what she can reasonably stow and carry over and above her cabin, crew and fuel spaces, tackle, apparel, provisions and furniture, and being so loaded, proceed therewith as customary, to Rotterdam, as ordered, on signing bills of lading, or as near thereto as she can safely get, and there deliver her cargo at such wharf, dock or place as consignees of cargo may direct, on arrival, always afloat, in accordance with bills of lading. * * * The vessel to have liberty to sail with or without pilots, and to tow and assist vessels in all situations; also *to call at any port or ports for coal and /or other supplies.*"

Then follow certain exceptions upon the ship's liability; provisions relative to the amount and payment of the freight, signature of bills of lading, advances of cash for the ship's disbursements at the port of loading, lay days, demurrage, the delivery of the cargo alongside; and a provision that "should the vessel not be in all respects

ready for cargo at her loading place, on or before the 10th of April, charterers or their agents have the option of canceling this charter."

The steamer entered upon the performance of this charter party by sailing from Cuba to her looding port, the United States, in ballast (*Luzzaraga*, Ansrs. 8th and 15th Ints., pp. 18, 19).

The date of her arrival is not stated; but it appears that her cargo, consisting of about 800,000 feet of lumber, was laden at Ship Island from March 31st to April 13, 1898 (*Id.*, Ans. 22d Int., p. 19). She probably reached Ship Island about March 30th.

She was cleared from the Custom House at Scranton, in the port of Pascagoula, Mississippi, April 14th (*Id.*, Ans. 7th Int., p. 18; *Receipt for Duties and Fees*, p. 33); but did not sail for Norfolk until April 19th (Ans. 7th Int., pp. 18, 22), owing to low tides (p. 7).

(**b**.) The evidence of the witnesses shows that she was bound to Norfolk.

Though the ultimate destination of the ship and cargo was Rotterdam (*Ans. to 12th Int., p.* 19), she was not bound there when captured. The witnesses several times repeated in their depositions that the steamer was immediately bound to Norfolk (*Luzarraga, Ans. to 29th Int., p.* 19; *Antienza, Ans. to 7th and 29th Ints., pp.* 22, 23). This also appears from the ship's documents.

(**c**) On April 14th, she obtained from the Collector of Pascagoula, a clean bill of health (p. 36), in which it was stated that "the Spanish S. S. *Buena Ventura* of Bilbao, of which J. de Luzarraga is master, is now ready to depart from the port of Ship Island, Mississippi, for Norfolk, Va., and other places beyond the sea * * * "

(**d**.) The manifest (p. 38) showed that she was bound for Norfolk. It is entitled: "*Coasting Manifest.* Manifest of the cargo on board of the Span. S. S. *Buena Ventura*, of the burden of 1,332 tons, whereof J. de Luzarraga is master, bound from Pascagoula, Miss., to Norfolk, Va." After a description of the cargo, the manifest continues:

"*Permit to proceed coastwise to lade for a foreign port,*"

"United States Customs Service, Port of Pascagoula.

"J. de Luzarraga, master of the Span. S.S. *Buena Ventura*, of Bilbao, having sworn as the law directs, that there are not laden on board the said vessel any articles or cargo whatever other than sea stores and the cargo specified upon the manifest now exhibited, *permission is hereby granted to the said vessel to proceed from this port to Norfolk, in the district of Norfolk, and State of Virginia, to lade bunker coal.* Any merchandise laden on the vessel at this port for export in her will be included in the export returns to the Treasury Department from this office.

"Given under my hand at the Custom House this 14th day of April, 1898.

"Fees, $2 for foreign vessel.

"A. E. KREBS,
"Deputy Collector."

(**e**.) The ship's clearance (p. 39) was for Norfolk, and is in the following terms:

"District of Pearl River, Port of Pascagoula, 14th day of April, 1898.

"J. de Luzarraga, having sworn as the law directs, to the within manifest, consisting of lumber and ship's stores, articles of entry, and delivered a duplicate thereof, *permission is hereby granted to the said S.S. Buena Ventura to proceed to Norfolk, Va., to lade bunker coal.*

"Given under our hands at the Custom House Pascagoula, the day and year above mentioned.

"Coasting manifest No. 1 and clearance paper.

"A. E. KREBS,
"Depy. Coll."

(**f**.) The first three bills of lading covering the cargo shipped by William S. Keyser & Co., were dated in Pascagoula, 13th April, 1898, and recited that the vessel was bound for Rotterdam, Holland, where the cargo was to be delivered "unto order of shippers or their assigns, he or they paying freight for the said timber and deals, *and all other conditions as per charter*-party dated Liverpool, 23d March, 1898."

The remaining three bills of lading issued at the same place and on the same day, covered the cargo shipped by Price & Pierce and Hunter, Benn & Co. These contained the same recitals as to destination, and provided for delivery there unto order of Messrs. Price & Pierce or their assigns "they paying freight for the said goods, *with all other conditions as per charter-party*" (*Rec.* following p. 32).

The charter contained a liberty to call at any port or ports for coals (*Clause* 2); and it is usual for vessels taking cargoes from Gulf ports to Europe to stop at Norfolk for this purpose (*Hostetter* v. *Park*, 137 U. S., 39). It was contemplated from the outset that Norfolk should be a port under the charter-party.

The ship's papers show, then, (1) that she was making the voyage under and in performance of the charter-party, and (2) that she was on that stage of the voyage which was to end at Norfolk.

(**g.**) It seems clear, as a matter of law, that the chartered voyage began when she sailed for Ship Island to load.

The charter-party, dated March 23d, provided that the vessel,

"*Now ready to leave Cuba * * * shall with all convenient speed sail and proceed to Ship Island.*"

During that stage of the voyage, the ship was in ballast; but from the moment she sailed from Cuba towards Ship Island, her service and the voyage under the charter-party began. This has been decided in a number of cases. An action on the contract would have been maintainable if she had not proceeded as provided by the charter-party (*Waterbury* v. *Street*, 3 U. S. App., 310). And if the ship had been detained in Havana by an epidemic, or by restraints of rulers, or had been delayed during the transit by dangers of navigation, the exceptions in the charter-party would have been available to the owner by way of defense to a suit for failing to proceed to Ship Island with all convenient speed.

The exceptions come into operation as soon as the

voyage under the charter is begun, and the voyage is begun under this form of contract when the ship sails under it towards her port of loading (*Waterbury* v. *Street*, 3 U. S. App., 147; *Bruce* v. *Nicolopulo*, 11 Exch., 129; *Barker* v. *McAndrew*, 11 C. B. n.s., 758; *Valente* v. *Gibbs*, 6 C. B. n.s., 268, 286).

It seems clear that this should be regarded as a part of a continuous voyage under the rule laid down in previous decisions of this Court (The *Joseph*, 8 Cranch, 451; The *Peterhoff*, 5 Wall., 28; The *Springbok*, 5 Wall., 1; The *Circassian*, 2 Wall., 130; The *Bermuda*, 3 Wall., 551).

It appears, then, that the ship, having sailed from Cuba before the 21st of April, 1898, upon a continuous voyage, in the ordinary course of which she was bound first to Ship Island and afterwards to Norfolk, was within the first clause of the 5th section of the proclamation, as a Spanish merchant vessel, which prior to April 21, 1898, had left a foreign port bound for a port or place in the United States.

The privileges and immunities granted to such a vessel are that she

"Shall be permitted to enter such port and to discharge her cargo, and afterward forthwith to depart without molestation; and any such vessel, if met at sea by any United States ship, shall be permitted to continue her voyage to any port not blockaded."

It must be conceded that the *Buena Ventura* did not *discharge* her cargo at Ship Island and forthwith depart; but that, on the contrary, she *loaded* a cargo and afterwards departed, without molestation, with all her proper papers and with an express Governmental permission to proceed to Norfolk (p. 39). This immaterial variation from the exact terms of the proclamation should not deprive the ship of its benefits, because it was then lawful for her to do what she did.

But it was the view of the District Judge, and, doubtless, will be urged by the captors here, that this section of the

proclamation applies only to vessels which, having sailed from a foreign port before April 21st, had arrived, or were in such position at the time of capture that they would have arrived, in a port of the United States after that date. This, however, is not the language of the proclamation.

Even assuming that it should be so read, the vessel may still be considered as within this section, because at the time of her capture she was still upon the voyage which had begun in a foreign port before April 21st, and was bound for Norfolk, a port or place in the United States.

It is immaterial that Norfolk was not her ultimate destination; she satisfied the two essential conditions of having sailed upon this voyage from a foreign port before April 21st, and being immediately bound to a port in this country.

Under the documents she carried Norfolk was a necessary port of call. There, in the usual course, she would have obtained her foreign clearance, her foreign bill of health, and a supply of bunker coals, of which only 58 American tons had been taken at Ship Island (*See Log, Apl. 19th*). That was also the place for her to file her foreign manifest (*Treas. Circular*, No. 84, June 5, 1896: *post*, p. 44).

Under any fair construction of the proclamation, she was, we submit, bound for a port within the United States when captured.

(**h.**) The reasons which led the District Judge to condemn the vessel are stated in his opinion as follows (p. 31):

"In the case of the *Buena Ventura* it is shown by the evidence that she cleared from Scranton, Miss., with permission to touch at Newport News for coal on her voyage to Rotterdam. Although she was to touch there for that purpose, it was not a port of discharge, nor was she from a foreign port, and her case clearly does not come within the language of the proclamation. Had she been captured approaching Newport News for the purpose of coaling, even then there might have been some opportunity for argument that the permission to touch had given her encouragement, and it should in justice furnish the same

protection as to a vessel coming from a foreign port; but that was not the case. When captured she must have been pursuing the same course she would have pursued had there been no intention to stop for coal; and neither such intention nor permission tended in any way to increase the liability of her capture. She was an enemy's vessel found upon the high seas at the commencement of the war, and not coming within the exceptions of the proclamation."

It will be seen from this passage of his opinion that the District Judge left completely out of view, the fact that the ship was making a voyage under a charter-party, the performance of which had been entered upon at Havana prior to April twenty-first.

He also states inaccurately the terms of the clearance. This was not from "Scranton, Miss., with permission to touch at Newport News for coal on her voyage to Rotterdam." There is no mention of Newport News or of Rotterdam in the clearance, which in terms says: "Permission is hereby granted to S. S. *Buena Ventura* to proceed to Norfolk, Va., to lade bunker coal" (p. 39). Nothing whatever is said in it as to her ultimate destination, or the voyage beyond Norfolk.

It is stated in the test affidavit, and was not disputed, that "in the ordinary course of such a voyage the *Foreign* Clearance of the vessel for Rotterdam would have been obtained and issued from the Custom House in Norfolk" (p. 7). This is confirmed by a reference to the Treasury Circular No. 84 of June 5, 1896 (*post* p. 44).

The District Judge further says that Norfolk was not a port of discharge. It is submitted, however, that this is immaterial. If a vessel was entitled to discharge at a port in the United States, and forthwith to depart without molestation, it would surely be her privilege to depart from such a port without discharging.

A further reason given for excluding her from the proclamation was that she was not from a foreign port. This raises the question of the construction of the charter-party, and the voyage the steamer was performing under it, which has been previously referred to, but which the Judge failed to discuss or consider.

The Court below appears to have been of the opinion that if she had been captured on "approaching Newport News for the purpose of coaling," instead of near Key West, her case would have been better, as the permission to proceed to Norfolk could be said to have given her encouragement, and should in justice furnish the same protection as to a vessel coming from a foreign port. But the Judge adds: "That was not the case" (p. 31).

Of course it was not *the* case, but was it a *different* case? The proofs show, incontestably, that, when captured, she was navigating by the landmarks of our coast, on the usual course of vessels bound from Gulf ports to Newport News. She had steered a comparatively straight course from a point 18 miles off the lighthouse at Chandeleur, S. 47° E., from the 19th to the 20th, and S. 42° 30′ E. from the 20th to the 21st, which is the last registered course in the Log prior to her capture. These courses, laid down on the chart filed herewith, show she went in a southeasterly direction during the whole of that time, and that unless the last stated course was changed she must have passed within the range of the light on Tortugas. From that point to the place of capture she was, as the captain states, "steering *near the coast* along the Florida Reef, bound for Norfolk for coal" (*Ans. to 29th Int., p.* 20).

Both the master and mate testified that the ship's course was at all times directed toward Norfolk, and that she was not at any time sailing beyond or wide of her place of destination (*Ans. to 29th Int., pp.* 20, 23). There is no reasonable doubt upon the whole evidence that she was going to Norfolk.

An inference contrary to a clearly proved fact should not be indulged by a prize court. Ordinarily the burden of proof is on the captors (*The Resolution*, 2 Dall., 12), and unless further proofs are ordered, the case must be rested upon the evidence of the witnesses examined on the standing interrogatories and upon the documents captured with the ship. A fact which is fairly established by such evidence must be taken by the Court, as fully demonstrated (*per Dr. Lushington, in the Aline & Fanny*, Spinks' Pr. Cas., *at p.* 329; *The Dos Hermanos*, 2 Wheaton, 76).

This being the undoubted rule of practice, it is not believed that the remark of the Court below that "she must have been pursuing the same course she would have pursued had there been no intention to stop for coal," was intended to imply any doubt on that point.

If the ship had not been intending to go to Norfolk under the permission granted by the collector at Pascagoula, but was designing to escape possible dangers of capture by proceeding direct to Rotterdam, it is probable that she would either have skirted the Cuban coast instead of our own, or would have passed to the south of Cuba through the Yucatan Passage. As she had not been at any stage of her voyage on a course leading in either of those directions, it is evident that, in the Judge's words, "the permission to touch *had* given her encouragement"; that she was steaming in supposed security to Norfolk; and that the permission under which she was so proceeding "should" (as the Judge says) "in justice furnish the same protection as [that afforded by the proclamation] to a vessel coming from a foreign port."

(i.) The case of the *Buena Ventura* appears to fall distinctly within the ruling made in the *Argo* (Spinks' Pr. Cas., p. 52), which arose under the Queen's proclamation of 1854 (App. B, *post*). Under that proclamation, "any Russian merchant vessel which prior to the date of this order" (March 29th) "shall have sailed from any foreign port bound for any port or place in Her Majesty's dominions, shall be permitted to enter such port or place and to discharge her cargo, and afterwards forthwith to depart without molestation"; and that "any such vessel, if met at sea by any of Her Majesty's ships, shall be permitted to continue her voyage to any port not blockaded."

The *Argo* was a Russian vessel, bound on a voyage from Cuba "to Cork *for orders*." "For orders" evidently meant directions as to the port at which the cargo was to be discharged. The voyage was made under a charter-party, pursuant to which the vessel had sailed in ballast from Havana to Matanzas, leaving

the former port prior to March 29th, had taken on her cargo at Matanzas, and sailed from there for Cork *after* March 29th. And the question was, whether she had sailed from a foreign port for a port in England before March 20th, within the meaning of the proclamation. Dr. Lushington said (p. 52):

"This is a Russian vessel, captured on May 6. She left Cuba on April 2, with a cargo belonging to Kirkland & Co., Glasgow. She reached Queenstown May 6, and was there seized by a revenue cutter. The cargo was restored, and a claim is now made for the ship and freight. The ship, being enemy's property, must be condemned, unless she is protected by some act of the British Government, and it is alleged that she is so protected by the Order in Council of March 29.

"With regard to the construction of that order, I have already stated in a former case the principles which will guide my judgment (The *Phœnix*, Spinks' Pr. Cas., p. 5), and to which I intend to adhere till better informed by a higher tribunal.

"I am of opinion that all relaxation of belligerant rights, eminating from the government of this country, and declared in authentic documents, should receive a liberal construction, as liberal a construction as the terms of those documents will admit of; but, in so doing, I must be governed and restricted by the words which are used, and abstain from giving an interpretation which cannot be borne out by the instrument here construed.

"First, then, what are the facts of the case? In the month of February this vessel was lying in the port of Havannah, whence she had come from the port of Antwerp with a cargo landed at Havannah; whilst at Havannah she took in ballast, then sailed for Matanzas, and there shipped her cargo. Matanzas was the last clearing port, and she left it on April 2d. According to the evidence of the master, on the 9th Interrogatory, the cargo was begun to be put on board on February 28th, and completed on March 30th.

"This vessel sailed under a charter-party bearing date February the 7th at the Havannah, and by the charter-

party it was stipulated that the vessel should load at Havana *and or* Matanzas; forty-two running days are to be allowed; at the end of which demurrage was to be paid. Should the vessel be ordered to Matanzas, sufficient cargo or ballast should be given at Havana to keep her safe.

"I must here observe that the contract, beyond all doubt, was made at the Havannah, and, as I understand it, the charterers had the option to load at the Havannah, or at Matanzas, or partly at one, or partly at the other; and not only was the contract entered into at the Havannah, but it began to be executed there, first, by taking in the ballast, as mentioned in the charter-party, and, secondly, by the running of the lay days, as appears by the indorsement of the charter party itself." * * *

"The next branch of this Order directs that any Russian merchant vessel which, prior to this Order, shall have sailed from any foreign port bound for any port or place in the Queen's dominions shall be permitted to enter and depart without molestation. This vessel did sail from the Havannah prior to the date of the order; she sailed from Matanzas subsequently to the date of the Order. When she left the Havannah she was in ballast, bound for Cork, according to the charter-party.

"It has been contended that this Order in Council contemplated that the Russian vessel should have been laden at the date of the Order, but I find no words in the Order that would justify my putting so strict a construction upon it; neither do I think that there are any words which impose the necessity of not touching at, or taking a cargo at some other port than that where the voyage commenced. For instance, I apprehend that a vessel might have taken in a part of her cargo from one foreign port, having left that port prior to the 29th of March, and taken in another part of the cargo at another foreign port subsequently.

"The real meaning of the Order in Council, according to my view of it, is that the vessel shall have sailed prior to the 29th of March on a voyage to end in Great Britain, and I am clearly of opinion that this was one continuous voyage, the commencement of which was at the Havannah,

and that the sailing from the Havannah prior to March 29th is a substantial compliance with the terms of the Order. I must, therefore, restore this vessel."

(**2**.) In determining the right of the *Buena Ventura* to exemption from condemnation under this paragraph of the proclamation, the Court should adopt the most benevolent construction of it that is consistent with its language, with its objects, and with the fair principles under which the President announced the war would be conducted.

(**a**.) The preamble of the proclamation stated it was desirable that the war "should be conducted upon principles in harmony with the present views of nations as sanctioned by their recent practice."

The form of the proclamation was adopted with slight variation from an Order in Council issued by the Queen upon the outbreak of the Crimean War in 1854 (*Appendix* B, *post*, p. 56, *Spinks' Prize Cases*, App., p. III.). The Fifth Article and the passage in the Queen's proclamation dealing with the question under discussion are subjoined:

President's Proclamation.

WHEREAS, it being desirable that such war should be conducted upon principles in harmony with the present views of nations and sanctioned by their recent practice, it has already been announced that the policy of this government will be not to resort to privateering, but to adhere to the rules of the Declaration of Paris:

Now, therefore, I, William McKinley, President of the United States of America, by virtue of the power vested in me by the Consti-

Queen's Proclamation.

The Queen's most Excellent Majesty in Council

Her Majesty being compelled to declare war against his Imperial Majesty the Emperor of all the Russias, and being desirous to lessen as much as possible the evils thereof, is pleased by and with the advice of her Privy Council, to order, and it is hereby ordered, that * * *

Any Russian merchant vessel which, prior to the date of this order, shall have sailed from any foreign port bound for any port or place

tution and the laws, do hereby declare and proclaim:

5. Any Spanish merchant vessel which, prior to April 21, 1898, shall have sailed from any foreign port, bound for any port or place in the United States, shall be permitted to enter such port and to discharge her cargo, and afterward forthwith to depart without molestation; and any such vessel, if met at sea by any United States ship, shall be permitted to continue her voyage to any port not blockaded.

in her Majesty's dominions, shall be permitted to enter such port or place, and to discharge her cargo, and afterwards forthwith to depart without molestation; and that any such vessel, if met at sea by any of her Majesty's ships, shall be permitted to continue her voyage to any port not blockaded.

The proclamations issued by Napoleon III and by the Czar were similar in effect but different in form (*Appendix* C, *post*, p. 57; *Appendix* D, *post*, p. 58).

All of the proclamations were alike in this, that they exempted from capture vessels which were bound to ports in the countries granting the immunity, upon voyages which had begun prior to the outbreak of war. A similar principle was adopted in the Franco-Prussian War (*Owen's Declaration of War*, p. 54).

The King's instructions of July 23, 1803, directed restitution of ships and cargoes (caught in trade with the enemy) *bona fide* belonging to British subjects; "sailing, before the knowledge of hostilities, from the Colonies of France and Holland, to whatever country they might be going" (The *Onderneeming*, 56 Rob., 7; *note*).

It is most significant that, though many prizes were taken in these different wars, not a single instance has been referred to where a ship which had sailed for a port in the captor's country before the outbreak of war, was seized and condemned as prize (*Owen*, pp. 59, 60). Unless such cases are found, it would seem plain that cap-

tures like the present are not based "On principles in harmony with the modern views of nations as sanctioned by recent practice."

A "practice" is not necessarily a custom in the sense in which customs are referred to in municipal law. What has been done by other powers in recent wars is a recent "practice" within the sense of the preamble; and a practice may be negative as well as positive.

It was formerly the practice to seize the persons of enemies on land and detain them as prisoners of war; to confiscate their property and debts due to them, even when contracted in piece. As a matter of strict right, some, if not all, of these things may still be done; but the recent "practice" is not to do any of them (1 *Halleck Int. Law*, by Baker, pp. 530-539).

In *Laurence's Principles of International Law*, 406, it is stated that:

"At the beginning of the Crimean War in 1854 a period of six weeks was granted by both sides, and in the case of the Russian White Sea ports the days of grace were made to date from the opening of the navigation at the break-up of the ice, and not from the commencement of hostile operations. Moreover, trading vessels on their way to enemy ports when the war began were allow to enter and depart unmolested within the specified time."

This would apply as well to vessels bound coastwise in the captor's country as to vessels bound from enemy ports.

In *Owen's Declaration of War* (London, 1889, pp. 54, 55), the recent practices of nations are thus stated:

"On the outbreak of hostilities the right of capture at once becomes active, but having regard to the example in moderation set by the belligerent powers in recent wars, it is not unreasonable to suppose that the right to capture any enemy vessels within the dominions on the outbreak of hostilities will henceforth be postponed. Thus, in the war with Russia in 1854, six weeks was allowed for Russian merchant vessels within British territory to load and proceed; whilst such vessels which had sailed for British

ports prior to the outbreak were permitted to enter, discharge and proceed unmolested to any port not blockaded. And on the occurrence of the Franco-German war in 1870, thirty days were allowed for German merchant vessels in French ports to load or unload and depart, whilst those vessels which had sailed prior to the war with cargoes on French account were also to be free from capture (60 *British State Papers*, 879). To French vessels in German ports a period of six weeks was allowed in which the vessels might load or unload and depart (60 *British State Papers*, 899)."

(**b.**) The construction of the language of the proclamation, moreover, should be liberal in favor of the captured ships.

This was held in a number of cases arising under the Queen's proclamation in 1854, and is the rule announced by the text writers.

In The *Phœnix*, Spinks' Prize Cases, p. 5, Dr. Lushington announced the rule for the construction of the Queen's proclamation, above referred to, in these terms:

" Much of the argument in the present case has turned upon that document which bears date the 29th of March last, and which immediately succeeds an order in council for preventing vessels clearing out for Russia, and ordering, as is customary in all wars, a general embargo or stoppage of enemies' vessels. Now upon what principle am I to put a construction upon this document? I am perfectly free to confess that I think it to be quite clear that whenever the Government of Great Britain or of any other country, by a public document in the nature of an order in council, *relaxes the severity of belligerent rights*, it ought to be taken *in favor of the party for whom it is intended, and that a liberal construction should be put upon it*. If it were necessary to confirm my opinion by authority, I could resort without difficulty to that of Lord Stowell. However, it is perfectly clear that that is the true principle. When discussion arises with regard to the intention of those from whom the document emanates, we can only look for that intention to the words in which they

express it. The principle being to put upon the words *the most extensive interpretation which is consistent with them*t I take it for granted there must be words in the documen, sufficient to justify that interpretation. I am not at liberty to travel out of the document. *If the words of the document are capable of two constructions, then I am clearly of the opinion that the one most favorable to the belligerent party in whose favor the document is issued ought to be adopted;* but the Court must bear in mind that its province is not *jus dare,* but *jus dicere;* and I must again refer to the principle which I have often enunciated in this Court: *verbis plane expressis omnino standum est.*"

The same learned Judge in The *Argo* (Spinks' Prize Cases, p.52), said:

"I am of opinion that all relaxation of belligerent rights emanating from the Government of this country, and declared in authentic documents, should receive a liberal construction—as liberal a construction as the terms of those documents will admit of."

Construing the proclamation in the light of the evils intended to be avoided and of the practices intended to be followed, it seems obvious that a vessel which has left one of our own ports prior to April 21st and is bound coastwise for a ther port ought to have the same protection as a vess which had sailed directly from a foreign port on the sam ate for a port in the United States. If there be any difference between the cases, the reasons for granting exemption from capture and condemnation are greater in the former case than in the latter, since the perils are greater, and a semblance of complete security is afforded by the granting of the coastwise clearance. The *Buena Ventura*, if not strictly within the language, was, nevertheless, within the plainest implications of the proclamation, and should, therefore, be entitled to its protection.

(**c**.) The Proclamation should be construed with due regard to our traditional policy towards the question of the exemption of private property at sea from capture during war.

From the administration of President Munroe, down to the present time, the Executive Department of the Government has consistently and persistently maintained, and has urged upon other Governments, the principle that private property at sea, as on land, should be exempt from capture during war. The messages and correspondence on this subject are collated in 3 *Wharton's International Law Digest*, Section 342.

These views have also been embodied in the treaties with Bolivia in 1858 (*Treaties and conventions between the United States and other Powers*, pp. 90, 93, Art. IX.), and with Italy in 1871. Article XII. of the latter is as follows:

"The high contracting parties agree that, in the unfortunate event of a war between them, the private property of their respective citizens and subjects, with the exception of contraband of war, shall be exempt from capture or seizure, on the high seas or elsewhere, by the armed vessels or by the military force of either party, it being understood that this exemption shall not extend to vessels and their cargoes which may attempt to enter a port blockaded by the naval forces of either party" (*Treaties and Conventions between the United States and other Powers*, pp. 581, 584).

The refusal of the United States to subscribe to the Declaration of Paris in 1856 was based in part on the failure of the other Governments to follow our lead upon this point (2 *Halleck's Int. Law* [*Baker's Ed.*], p. 41). Mr. Marcy, writing to Mr. Seibels July 14, 856, said:

"The objections by the Government of the United States to the declaration of the Paris conference of 1856 are that (1), 'All the four propositions must be taken or none'; (2) they limit the future sovereign power of the parties concerned; (3) they exact the surrender of privateering, a surrender the United States cannot make; (4) they do not exempt private property of non-belligerents from confiscation" (3 *Wharton's Int. Law Dig.*, Sec. 342, p. 268)

Successive Presidents and Secretaries of State have emphasized the desirability of the general adoption of this principle, from the earliest times down to the present day; and President McKinley, whose proclamation of

April 26th declared that the war should be conducted upon principles in harmony with the present views of nations and sanctioned by their recent practice, is himself an advanced advocate of the doctrine. In his second annual message to the Senate and the House of Representatives, dated December 5, 1898, after the conclusion of the war with Spain, his views on this point were expressed in these words:

"We desire, in common with most civilized nations, to reduce to the lowest possible point the damage sustained in time of war by peaceable trade and commerce. It is true we may suffer in such cases less than other communities, but all nations are damaged more or less by the state of uneasiness and apprehension into which an outbreak of hostilities throws the entire commercial world. It should be our object, therefore, to minimize, so far as practicable, this inevitable loss and disturbance. This purpose can probably best be accomplished by an international agreement to regard all private property at sea as exempt from capture or destruction by the forces of belligerent powers. The United States Government has for many years advocated this humane and beneficent principle, and is now in position to recommend it to other powers without the imputation of selfish motives. I therefore suggest for your consideration that the Executive be authorized to correspond with the governments of the principal maritime powers with a view of incorporating into the permanent law of civilized nations the principle of the exemption of all private property at sea, not contraband of war, from capture or destruction by belligerent powers" (*Messages and Papers of the Presidents*, Vol. 10, pp. 191, 192).

It is believed that the delegates appointed by the President to the recent Peace Conference at the Hague were instructed to and did endeavor to obtain the assent of that Conference to the general adoption of these principles.

This attitude of the Government towards private property at sea in time of war, so long maintained and adopted by the present Executive, should lead the Court to regard the proclamation as a benevolent design to afford immunity from capture to all vessels over which its protection, by the most liberal interpretation, can be extended.

II.

The Buena Ventura was exempt from condemnation by the fourth article of the proclamation.

The proclamation was issued on April 26, 1898, and on that day it appears from the record that the *Buena Ventura* was in Key West, in custody of the United States Marshal, under the process issued pursuant to this libel.

The fourth section of the proclamation, which, for comparison, may be shown in parallel with the similar provision of the Queen's Proclamation of March 29, 1854, is as follows:

President's Proclamation	*Queen's Proclamation.*
4. Spanish merchant vessels in any ports or places within the United States, shall be allowed till May 21, 1898, inclusive, for loading their cargoes and departing from such ports or places, and such Spanish merchant vessels, if met at sea by any United States ships, shall be permitted to continue their voyage if, on examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the above term; Provided, that nothing herein contained shall apply to Spanish vessels having on board any officer in the military or naval service of the enemy, or any coal (except such as may be necessary for their voyage), or any other article prohibited or contraband of war, or any despatch of or to the Spanish government.	Russian merchant vessels, in any ports or places within her Majesty's dominions, shall be allowed until the tenth day of May, next, six weeks from date hereof, for loading their cargoes and departing from such ports or places; and that such Russian Merchant Vessels, if met at sea by any of her Majesty's ships, shall be permitted to continue their voyage, if on examination of their papers it shall appear that their cargoes were taken on board before the expiration of the above term; Provided, that nothing herein contained shall extend or be taken to extend to Russian vessels having on board any officer in the military or naval service of the enemy, or any article prohibited or contraband of war, or any despatch of or to the Russian Government.

(**a**.) This section gave freedom and safe conduct to all purely merchant vessels in our ports on April 26th.

It is noticeable that neither proclamation distinctly states that it is limited in its application to merchant vessels in any ports or places within the sovereign's dominions on the outbreak of war, or on the day the proclamation was promulgated, but that *only the date of the expiration of the privilege* is stated.

In the Queen's proclamation vessels were allowed "until the tenth day of May next, six weeks *from the date hereof*" (March 29th); but this privilege did not in terms extend back to the beginning of war. The existence of war was stated in another Declaration issued by the Queen on May 28th (*Appendix A*, *post*, p. 55); and it existed even earlier. It is obvious therefore that the Order of March 29th did not in terms apply to vessels which left English ports after war broke out and before March 29th, 1854.

In the President's proclamation the privilege expired on May 21st. By leaving out the words "twenty-five days from the date hereof," it has been claimed the President left open for construction the question whether he intended this privilege to take effect from the date of the proclamation, or to have it relate back to some previous date, or to leave it open so as to give exemption to any vessel which may have left a port in the United States prior to May 21st, and whether before or after April 21st.

The District Judge read into the proclamation an intention to have its privileges apply only to vessels which were actually in ports or places of the United States *on April 21st*, construing the first clause so that it should read as follows: "Spanish merchant vessels in any ports or places within the United States [on April 21st, 1899], shall be allowed till May 21st, inclusive, for loading their cargoes and departing from such ports and places," &c. By that construction he excluded the *Buena Ventura* from the exemption intended to be conferred by this section, for the reason, as he held, that she was not within a port or place of the United States on April 21st (Opinion, pp. 27, 28).

As no rights of the captors attached by force of the cap-

ture or prior to condemnation (the *Aighurth*, the *Sarah Starr*, Blatchf. Pr. Cas., 635, 637; *Stevens v. Bagwell*, 15 Vesey, 139; *Davis Int. Law*, 261; 2 *Halleck Int. Law*, Baker's Ed., 363), and as there had been no condemnation at the date of the President's proclamation, it was clearly within the *power* of the Executive to release, by the proclamation, any vessels which had been captured prior to that date, and were then in port, and within the terms of the exemption. The only question, therefore, under this section is, must this proclamation be so construed as to limit its application to vessels which were in port on April 21st, and to exclude from its benefits those vessels which were in ports or places within the United States on April 26th.

On this point "the Court," as stated by Dr. Lushington, in the *Argo* (Spinks' Pr. Cas., 52, 53), "must be governed and restricted by the words which are used, and abstain from giving an interpretation which cannot be borne out by the instrument to be construed."

Unless the contrary is stated on the face of a proclamation, it is undoubtedly the general rule that it takes effect from the date of its execution (*Lapeyre* v. *United States*, 17 Wallace, 191; *U. S.* v. *Norton*, 97 U. S., 170; *De Bow*, v. *U. S.*, 11 Ct. Cl., 676).

Wheaton, Maritime Captures and Prizes (p. 299, lays down the same rule:

"An armistice, truce or other suspension of hostilities, binds the contracting parties from the date of its conclusion."

Lapeyre v. *U. S.* appears to have been the earliest case in which the exact question was considered by this Court. A majority held that Proclamations, like Statutes, become effective from their date, but four of the Justices dissented upon the ground that, not having been publicly promulgated until three days after it was issued, effect could be given to it only from the date of its public promulgation. Upon this point the dissenting Justices (Hunt, Miller, Field and Bradley), said (p. 206):

"It has been suggested, although this proclamation did not come into existence until the 27th of June, that after

it did take effect it related back to the 24th of that month" (the date on which it was signed). "Such a principle is unknown to our laws. It involves the general effect of a retroactive law. That a man should on the 24th of June perform an act lawful and commendable; that by an official declaration on the 27th this lawful act should be rendered unlawful at the time it was performed and punishable, is in violation of every idea of constitutional law and of common right. When applied to criminal law such an act is *ex post facto*, and retroactive when applied to civil cases."

In the Court below the Government maintained that the proclamation became operative only from its date, and that construction was not opposed by the claimant in the present case; though some of the other claimants who were then before the Court contended that the words [in any port or place] "on April 21st" should be read into the proclamation (Opinion, p. 27).

If the ordinary rule of construction is to be followed, the proclamation took effect on April 26th and exempted from detention all the Spanish *merchant* vessels in ports or places of the United States on that day, *except* (1) vessels having on board contraband persons, (2) contraband goods or (3) more coal than was needed for the voyage. The *Buena Ventura* fell within none of these exceptions, and hence, by the explicit language of the proclamation, she should have been allowed to proceed to destination without molestation.

(**b**.) If, however, the proclamation be considered ambiguous, then a liberal construction of it should be adopted, having regard to the purpose and intent of the whole proclamation, its objects and aims, and designed to give effect to such objects, rather than one which reads into it a date (April 21st) which would defeat them.

Even though effect be given to it, by relation, anterior to its date (April 26th), it would not follow that the retroactive force should stop at April 21st. No date was expressly fixed for the commencement of immunity. The

omission of such date implies either that it was to have force only from its issue, or that it was to include all merchant ships in our ports, or which might have been, or might come in them, before May 21st, the date the immunity expired. The latter construction would perhaps correspond better with the root idea of notice, which underlies the proclamation.

The apparent purpose of the document was to prevent the capture and condemnation of Spanish merchant vessels which might come innocently, and by our encouragement, within our grasp, without knowledge that war had broken out, and without an opportunity, based upon such knowledge, of separating themselves fully from the conflict and avoiding the risks of capture. Thus, by the Fifth Section, Spanish vessels, which, prior to April 21st, had sailed from any foreign port bound for our ports, were exempted; and by the Fourth Section, a corresponding exemption was doubtless intended to be given to vessels in our ports, or which might have left our ports in ignorance of the war, and were still in waters where, through ignorance, they were liable to capture before an opportunity was given them to leave the theatre of war.

The *Buena Ventura* left Ship Island on the 19th of April; and her officers, at all times prior to the capture, were ignorant that war had begun, or was about to begin (Record, p. 7). It is as wrong morally, and as contrary to the principle of the proclamation, to condemn her when captured in our coast waters and bound for one of our ports, as it would have been if she had sailed from a port in Mexico; yet, in the latter case, the language of the proclamation would have undoubtedly protected her.

A liberal construction of the proclamation, in the sense in which Dr. Lushington laid down the rule, requires a construction in accordance with its spirit and intent, so that all vessels similarly situated shall have the same exemption. It is illogical and absurd to say that the *Buena Ventura* would have been exempt from condemnation, by the fourth section if she had not sailed until April 21st, but that because she sailed on the 19th she must be condemned; or that the fifth section would protect her if

she had sailed from Mexico for Norfolk on the 19th but having left Ship Island on that day she must be condemned. The Court may reject any construction which would lead to illogical or absurd results. At least such results ought not to be reached through construction, or by reading in a date not expressed.

(**c**.) But if the fourth section of the proclamation must be limited to vessels which were in ports or places of the United States on April 21st, the *Buena Ventura* was in such a place, within the meaning of the proclamation.

It appears from her log, which is on file in this Court that she sailed from Ship Island for Norfolk at 7 A. M., April 19th. At 9 A. M. she anchored outside the bar, and remained there until 5.30 P. M. of the same day, when she raised anchor and proceeded on a course S. 65° E. At 8 P. M. the log records that Chandeleur Light disappeared, distant 18 miles, and that the course was then set S. 50° E. At noon of the 20th she was in latitude 38° 12′ N. and longitude 86° 43′ W.

The distance made up to that time was 162 miles.

The true course is then stated in the log to be S. 47° E.

The entry for April 21st shows the course in the first watch was S. 47° E., with a northwesterly variation of 4° 30′; and the true course is set down for the day as S. 42° 30′ E. The distance made on this day is 203 miles. The total distance made up to noon from departure was 365 miles.

At noon of April 21st her position was in latitude 25° 53′ N., longitude 84° 10′ W.

These positions and courses, laid down on the chart (filed herewith), show the vessel to have been at that time less than 100 miles in a northwesterly direction from the light on Tortugas. If the last course which is noted in the log, South 42° 30′ E., was continued, the steamer went straight to Tortugas Light, and if she maintained, as presumably she did, the average speed previously made, that is, about 8.5 knots per hour, she would have been at Tortugas about 11 P. M. of April 21st

Whether she passed to the westward or to the eastward of Tortugas does not appear; but her evidence is that she

was proceeding on the morning of the 21st close to the reefs along the Keys, and bound eastward on the course to Norfolk. She was eight or nine miles from Sand Key Light, which is a few miles to the westward of Key West, when captured, but her distance *off* the Light does not appear. She may have been within a mile of it, and to the eastward or westward of it, as well as eight or nine miles to the southward of it; but her exact position nowhere appears other than that, as before stated, she was steering "close to the reefs."

It is obvious, therefore, that she had been within the range of our lighthouses, and was within the immediate neighborhood of Tortugas, on the night of the 21st – if, indeed, she did not pass inside of Tortugas; and hence clearly within our territorial waters, and within a place in United States on April 21st. If the decision of the case should make necessary the exact determination of this point, further proofs should be allowed (The *Venus*, 1 Wheat., 112; The *Mary*, 9 Cranch, 126, 140; The *Frances*, 8 do., 354; 9 do., 183; The *London Packet*, 2 Wheat, 372; The *Sally Magee*, 3 Wall., 451).

What is a "place," as distinguished from a "port" in the United States, has not been definitely stated, at least with regard to waters within the gulf? Our territorial rights in the Gulf waters have never been admitted to be so limited as in the waters of the ocean. The limit of our jurisdiction over the shore waters of the ocean was stated by Chief Justice Marshall, in *Church* v. *Hubbart* (2 Cranch, p. 187), to be limited only by the range of the cannon shot; and the political department of the government offered to discuss with the English government in 1864, the question whether, by reason of the improvements in gunnery, such boundary does not at present exceed one marine league (3 *Wharton, International Law Digest*, Sec. 32, p. 104).

Formerly a much greater jurisdiction was claimed over coast waters (*Reg.* v. *Keyn*, 2 Exch. Div., 63, 72, 73, 74; *Wharton Int. Law Dig.*, § 32; 1 *Kent's Com.*, star. pp. 30, 31); but it seems now to be recognized in *Wiborg* v. *United States*, 163 U. S., 632, 658, 660, that the marine

belt on the ocean over which we have jurisdiction is limited to three miles.

This, however, does not necessarily apply to the Gulf. In Mr. Bayard's letter to Mr. Manning, Secretary of the Treasury, May 28, 1886 (1 *Wharton Digest*, Sec. 32, p. 107), he pointed out that the position of the department of state that the sovereignty of the shore extends only three miles is limited to "the eastern coast of North America."

In the Gulf a more extensive sovereignty has been claimed. This is made very clear in the treaty of Guadalupe Hidalgo between the United States and Mexico, concluded February 2, 1848, in which the boundary line between the dominions of the parties is made to begin in the Gulf of Mexico *three leagues from land*, and to end at a point in the Pacific Ocean between Upper and Lower California one league from the shore. This provision of the treaty is as follows:

"The boundary line between the two Republics shall *commence in the Gulf of Mexico, three leagues from land*, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte, or opposite the mouth of its deepest branch, if it should have more than one branch emptying directly into the sea; from thence up the middle of that river, following the deepest channel, where it has more than one, to the point where it strikes the southern boundary of New Mexico; thence, westwardly, along the whole southern boundary of New Mexico (which runs north of the town called Paso) to its western termination; thence northward, along the western line of New Mexico, until it intersects the first branch of the river Gila (or if it should not intersect any branch of that river, then on the point on the said line nearest to such branch, and thence in a direct line to the same); thence down the middle of the said branch of the said river, until it empties into the Rio Colorado; thence across the Rio Colorado, following the division line between Upper and Lower California, to the Pacific Ocean. * * * And, in order to preclude all difficulty in tracing upon the ground the limit separating Upper from Lower California, it is agreed that the said limit shall consist of a straight line drawn from the

middle of the Rio Gila, where it unites with the Colorado, to *a point on the coast of the Pacific Ocean, distant one marine league* due south of the southernmost point of the port of San Diego."

Treaties and Conventions between the United States and other Powers (p. 683).

These boundary lines are reaffirmed in the Treaty of December 30, 1853, Art. I. (*Treaties and Conventions*, p. 694).

In 1 *J. Q. Adams' Memoirs*, 376, 377, reference is made to the claim of Mr. Jefferson that our jurisdiction should extend, for certain purposes at least, to the Gulf Stream. He writes:

"The President (Mr. Jefferson, in an informal conversation), mentioned a late act of hostility committed by a French privateer near Charleston, S. C., and said, 'We ought to assume as a principle that the neutrality of our territory should extend to the Gulf Stream, which was a natural boundary, and within which we ought not to suffer any hostility to be committed.' Mr. Gaillard observed that on a former occasion, in Mr. Jefferson's correspondence with Mr. Genet, and by an act of Congress at that period, we had assumed only to claim the usual distance of three miles from the coast; but the President replied that he had then assumed that principally because Genet by his intemperance forced us to fix on some point, and we were not then prepared to assert *the claim of jurisdiction to the extent we are in reason entitled to;* but he had taken care to reserve this subject for future consideration, with a view to this same doctrine for which he now contends."

President Jefferson expressed his views on this subject in his Fifth Annual Message, 1805, as follows:

"Since our last meeting the aspect of our foreign relations has considerably changed. Our coasts have been infested and our harbors watched by private armed vessels, some of them without commissions, others with those of legal form, but committing piratical acts beyond the

authority of their commissions. They have captured in the very entrance of our harbors, as well as on the high seas, not only the vessels of our friends coming to trade with us, but our own also. They have carried them off under pretense of legal adjudication; but not daring to approach a court of justice, they have plundered and sunk them by the way, or in obscure places where no evidence could arise against them; maltreated the crews, and abandoned them in boats in the open sea or on desert shores, without food or covering. These enormities appearing to be unreached by any control of their sovereigns, I found it necessary to equip a force *to cruise within our own seas*, to arrest all vessels of these descriptions *found hovering on our coast within the limits of the Gulf Stream, and to bring the offenders in for trial as pirates.*"

(*Messages and Papers of the Presidents, Vol. I., pp.* 383, 384.)

Though our courts may not take jurisdiction to punish offenders for crimes committed more than three miles from our shores, the government has claimed a jurisdiction over our coast waters for other purposes, and still claims it, to a distance of at least *four leagues*. The Collection Act of the United States, March 2, 1799, S. 27, provided:

"That if after the arrival of any ship or vessel, so laden with goods as aforesaid, and bound to the United States, within the limits of any of the districts of the United States, or within four leagues of the coast thereof, any part of the cargo of such ship or vessel shall be unladen, for any purpose whatever, from out of such ship or vessel as aforesaid, before such ship or vessel shall come to the proper place for the discharge of her cargo, or some part thereof, and shall be there duly authorized by the proper officer or officers of the customs to unlade the same, the master or other person having the charge or command of such ship or vessel, and the mate or other person next in command shall respectively forfeit and pay the sum of one thousand dollars for each such offense; and the goods, wares and merchandise so unladen and unshipped shall be forfeited and lost, except in the

case of some unavoidable accident, necessity or distress of weather."

R. S., § 2760, now in force, provides:

The officers of the revenue cutters shall respectively be deemed officers of the customs, and shall be subject to the direction of such collectors of the revenue, or other officers thereof, as from time to time shall be designated for that purpose. They shall go on board *all vessels which arrive within the United States or within four leagues of the coast thereof*, if bound for the United States, and *search and examine the same*, and every part thereof, and shall demand, receive, and certify the manifests required to be on board certain vessels, shall affix and put proper fastenings on the hatches and other communications with the hold of any vessel, and shall remain on board such vessels until they arrive at the port or place of their destination.

Similarly, the British Hovering Act, passed in 1736 (9 George II., Cap. 35), assumes for certain revenue purposes a jurisdiction of four leagues from the coasts by prohibiting foreign goods to be transhipped within that distance without payment of duties.

In *Hudson* v. *Guestier*, 6 Cranch, 281, this Court rocognized the validity of a foreign condemnation for breach of a foreign municipal regulation, though the Court below had charged the jury that a seizure within six leagues from shore was valid, and the seizure was alleged and proved in a collateral action here to have been made on the high seas.

Chancellor *Kent*, in his *Commentaries*, considers that for fiscal and defensive regulations the United States would be justified in claiming jurisdiction over the waters between the great headlands on our coasts, including the basin from the end of Cape Florida to the mouth of the Mississippi River, which would include the whole of the waters in which the *Buena Ventura* was navigating during the whole day of April 21st (1 *Kent's Comm.* pp.*30, 31,

When the President used the word "place," as distinguished from "port," in the United States, in his procla-

mation, it is assumed that he meant any place over which our government for any purpose would exercise any kind of jurisdiction or control, and where, accordingly, we would be likely to have public vessels, which, upon the outbreak of war, would be in a position to capture Spanish merchant vessels proceeding along or through such places in ignorance of the war.

Without attempting to state accurately the limits of a "place" within the United States, in the sense of the proclamation, it seems that the waters which are lighted by the lighthouses we have placed along our coast line for the guidance of mariners, and through which the *Buena Ventura*, by our permission, was passing during the last hours of the 21st and the morning of the 22d, are such a "place," and that, accordingly, she should be exempt from condemnation, because she was within it, in the sense of the proclamation.

III.

The Coastwise Clearance granted to the steamer by the Collector of the port of Pascagoula was in legal effect a safe conduct, permission or license to the vessel to proceed to Norfolk, which, having been acted and relied upon, was not revoked by the outbreak of war, unknown to the master, during the vessel's passage, but should have protected her from capture.

The Revised Statutes of the United States, Sec. 4367, and Article 149 of the Customs Regulations of 1892, and the Circular of the Treasury Department No. 84 of 1896 (ed. 1, 19, '97, 2,500), authorize the collector of a port to grant coastwise clearances to vessels which have complied with the law.

Section 4367, R. S., provides:

"The master of every foreign vessel bound from a district in the United States to any other district within the same, shall, in all cases, previous to her departure from

such district, deliver to the collector of such district duplicate manifests of the lading on board such vessel, if there be any, or, if there be none, he shall declare that such is the case; and to the truth of such manifest or declaration he shall swear, and also obtain a *permit* from the collector, *authorizing him to proceed to the place of his destination.*"

The Customs Regulations of 1892, Art. 149, provide:

"No foreign vessel can engage in carrying merchandise nor passengers from port to port in the United States, even though the voyage may be temporarily broken by a clearance for a foreign port and arrival thereat; but she *may proceed from one domestic port to another* for the purpose of unlading her foreign cargo, or to take in cargo for a foreign voyage."

The following is the Treasury circular:

(17198.)

"Clearances of vessels proceeding foreign via a domestic port (Circular No. 84):

"TREASURY DEPARTMENT, June 5, 1896.

"To Collectors of Customs and others:

"A foreign vessel clearing from a domestic port to a foreign port *via* a domestic port, where she is to stop for coal, supplies, or cargo, should proceed under sections 4367, 4368 and 4369, Revised Statutes, delivering to the collector at the first port duplicate manifests, properly sworn to, and obtaining *permit*, as in other cases, *to be presented at the port of destination in the United States.* If imported cargo be retained on the vessel, the requirements of sections 2654, 2776 and 2777, Revised Statutes, as to bond, must be observed.

"Shippers' manifests of export should be accepted by the collector at the first port as if the vessel were to proceed from such port directly to a foreign port, and returns should be made to the Bureau of Statistics accordingly, the collector at the second port forwarding returns only of the merchandise laden at his port for export, or of merchandise laden elsewhere, covered by shipper's manifest presented at his port and not included in the returns of another collector. It is the practice for the master to file at the last port of departure for a foreign port a full manifest of the cargo (sec. 4197, Rev. Stat., Synopses, 5644, 6893). The *fee* for the *coastwise permit* is $2.

"Similar action as to returns should be taken in the case of a vessel of the United States clearing coastwise with cargo laden at one domestic port for export in her *via* another domestic port.

"Forms 483 and 504¾ (Cat. Nos.), will be amended by the Department accordingly, so that they may show whether or not, merchandise laden at a domestic port for exportation via another domestic port, will be included in the statistical returns from the first port.

W. E. CURTIS,
Acting Secretary."

Pursuant to these provisions of law the ship paid for and obtained the following pass:

"DISTRICT OF PEARL RIVER,
"PORT OF PASCAGOULA,
"14th day of April, 1898.

"J. de Luzarraga, having sworn as the law directs, to the within manifest, consisting of lumber and ship stores, articles of entry, and delivered a duplicate thereof, *permission is hereby granted to the S/S Buena Ventura to proceed to Norfolk, Va., to lade bunker coal.*

"Given under our hands at the Custom House, Pascagoula, the date and year above mentioned.

(Seal) "Deputy Collector of
"Customs, Port of Pasca- "A. E. KREBS,
"goula, District of Pearl Depy. Coll.
"River, Miss.
"Coasting Manifest, ₱1 and clearance paper."

The face of the coasting manifest, on the back of which the clearance is printed, contains this item: "Fees $2 for foreign vessel." This was the proper charge for a coastwise clearance (*ante* p. 44).

Foreign vessels are excluded from our coastwise commerce, except in the cases provided by the above regulations, and can enjoy the privileges by them conferred only upon the complying with the law and paying the statutory fees. In the present case, it appears from the manifest itself, upon which the clearance and pass are endorsed, that master did comply with the laws, and did pay the "fees $2 for foreign vessel," and thus, for a valuable consideration, secured the pass duly authorized by the Government, entitling him to proceed from Pascagoula to Norfolk.

Whilst proceeding in supposed security, under the authority thus obtained, and in the usual path of vessels bound coastwise, the ship was captured without any previous notice of the revocation of the license, brought into Key West, and has been condemned; and not even the consideration of "fees $2 for foreign vessel" has been restored or offered back.

This pass, absolute on its face, should have protected the ship until she had completed that part of her voyage which it covered. It was not a mere statement that the vessel had entered and cleared from the Custom House, such as is given by authority of R. S., §4201, to vessels bound on foreign voyages. It was a permission or license to do a specific thing for which a valuable consideration had been paid, and in reliance upon which the master had acted. In every just sense it was an executed license, which should not have been revoked, even upon notice, much less without notice (*Wood* v. *Manley*, 11 Ad. & El., 34; *Devonshire* v. *Eglin*, 14 Beav., 530; *Rerick* v. *Kern*, 14 Serg. & Rawle, 267; *Decorah Woolen Mill Co.* v. *Greer*, 49 Iowa, 490; *Buchanan* v. *Logansport Ry.*, 71 Ind., 265; *Wilson* v. *Chalfant*, 15 Ohio, 248).

To revoke the license without notice, and capture the ship at the same time, was contrary to every principle of justice and right. The breaking out of war, if war be deemed to exist on April 22d, should not operate as a revocation of this license (1 *Halleck Int. Law*, Bakers Ed., p. 542). No declaration of war was made until April 25th, and there were no actual hostilities before this capture.

A retroactive declaration of war should be held to have effect only on our public relations, and not upon questions of private right (see *post*, pp. 49–52).

Though the existence of war, when officially declared to exist, abrogated the public conventions between the United States and Spain, it should afford no excuse to our Government for refusing to allow performance of its private contract, which had been entered into with the master of a foreign ship.

War does not abrogate contracts between citizens of belligerent states; at most, it merely suspends their operation. If a citizen of the United States, whose contract with a

Spanish subject was suspended by the outbreak of war, took advantage of that circumstance to seize the enemy's private property within his reach, the criminal law would punish the offense.

The simplest considerations of justice require that the pass in this case should protect the ship. It was absolute on its face; it had encouraged the master to make the voyage; and the ship had sailed under and in reliance upon it directly into danger.

If the license had not been executed or partly executed, the vessel would not have been in the place where she was captured.

If, however, the war should be deemed to operate as a revocation of the license for which a consideration was paid, the steamer should, at least, be placed in the same or as good a position as that which she occupied when the license was granted; that is, she should have been returned to an American port and there given the same freedom that she had in Pascagoula. Assuming the captors were justified in visiting the vessel as a ship flying the enemy's flag, still, when the examination of her papers disclosed the fact that she was sailing under a pass to Norfolk, the Commander should have allowed her to proceed to Norfolk in accordance with the original permission. At most, he might have taken her into Key West for further search; but on finding no ground for detention, he should have permitted her to clear for a foreign port direct, in accordance with the proclamation.

A further reason for giving the steamer the benefit of the pass is that it is the same kind of a pass that the President, by his proclamation, gave to vessels which were bound from foreign ports to ports in the United States on the same day. Even if, under other conditions, the outbreak of war would have operated to revoke this permission, it should not in this case be held to do so, because it is the same kind of a permission which was granted by the Executive to vessels on the high seas, bound to our ports from ports in foreign countries.

The existence of provisions of law for the granting of passes from one port in the Union to another may have been the reason why vessels which had or might have

secured such passes were not included in the proclamation. If they had bought and paid for a pass and had sailed in reliance upon it, and were entitled to go to destination under it, there was no occasion for the Executive, by proclamation, to give them another pass.

IV.

The restoration of the "Buena Ventura" should be accompanied by damages for unlawful capture and condemnation.

Every marine capture is at the peril of the captors, who must show just grounds for the detention or condemnation of the ship, or be liable for damages (The *Resolution*, 2 Dall., 1; The *Grand Sachem*, 3 Dall., 333; The *Charming Betsy*, 2 Cranch, 64; *Maley* v. *Chattuck*, 3 Cranch, 458; The *Amiable Nancy*, 3 Wheat., 546; *British Consul* v. *Thompson*, Bee., 142). If, however, there was probable cause for the capture or the subsequent detention, it is proper to submit the cause for adjudication before the prize tribunal, and no damages will be recoverable though the Court should acquit without the formality of ordering further proof (The *Olinde Rodrigues*, 174 U. S., 510; The *George*, 1 Mason, 26).

The application of these principles to the present case authorizes a claim for damages upon one or more of the following grounds:

(**a**.) The capture was premature, and out of accord with recent practice.

At the time the *Buena Ventura* was seized, there had been no declaration of war, nor had any acts of violence occurred between the armed or naval forces of the different nations. No hostilities, which in International Law are deemed to constitute a beginning of war without a declaration, had taken place. Without a declaration, it seems that war

does not begin until some blow is struck or some shot fired (1 *Halleck, International Law*, Ed. of Baker, p. 525; *Owen's Declaration of War*, pp. 12, 36, 37; *Hall. Int. Law*, 4th Ed., pp. 63, 392; *Takahashi's International Law during Chino-Japanese war*, pp. 9, 39; The *Teutonia*, L. R., 4 P. C., 171, 179).

The Spanish proclamation of war, issued April 23d, recognizes the treaties between the countries as in force up to that date (*ante*, p. 9).

By his message of April 26th (*ante*, p. 11), the President recognized that the United States was not in the complete position of a belligerent, and that the then existing status was doubtful and anomalous.

Nothing was done by the United States necessarily constituting an act of war, at least until the fleet reached the Cuban shore and actually established a blockade. It was while the fleet was leaving the Key West Harbor, bound for the blockading stations, that this capture was made.

Neither the order for the blockade which was issued on the 21st, nor the proclamation which was issued on the 22d (*ante*, pp. 7, 8), was of itself an act or declaration of war. It was merely a paper blockade until made effective by the actual presence of the fleet before the places blockaded.

For the same reason the sailing of the fleet from Key West for the blockading stations was not an act of war. If the fleet had remained at the place where the capture was made, there would have been no blockade in the sense of the President's proclamation.

In order to prevent a forfeiture, the Court will regard parts of a day (*Coombs* v. *Pitt*, 2 Burr., p. 1423; *Burges* v. *Solomon*, 97 U. S., 381, 384, 385). In the part of the day when the *Buena Ventura* was seized, there was not even an existing blockade, to be cited as an act of war.

Though war may be deemed to begin by an actual collision of opposed national forces, it is contrary to good practice to commence exercising the right of capture at sea before some public declaration or notice is issued to the world.

Calvo, 4 *Droit Int.* (5th Ed.), p. 46, quotes with ap-

proval the following passage from *Hautefeuille* on this subject:

"Hautefeuille insiste particulierement sur la necessite d'une déclaration préalable et speciale dans le cas d'une guerre maritime; 'il importe en effet de prevenir les navigateurs de la cessation de l'état de paix, afin qu'ils ne quittent pas le port sans prendre les précautions necessaires pour éviter le danger, et qu'ils ne deviennent pas la proie d'un ennemi au moment ou ils pensaient rencontrer un ami.' 'Les hostilites, dit-il, commises avant la déclaration de guerre ou la notification de tout autre acte equivalent et indiquant l'époque de l'ouverture de la guerre sont, à mes yeux, des attentats contre les droits de la nation attaquée, des violations flagrantes du droit primitif. Ces violations sont d'autant plus coupables qu'elles ne peuvent s'appuyer sur aucune disposition de la loi secondaire, sur aucune coutume, sur aucun usage international. * * * Toute entreprise de cette nature est un acte de brigandage, qui devrait mettre son auteur au ban des nations, et motiver contre les coupables l'application des peines reservees aux pirates."

Reference has previously been made to the fact that though the abstract right to capture an enemy's floating property attaches immediately on the acknowledged outbreak of war, the most recent book on the subject, *Owen's Declaration of War*, London, 1889, while stating the general principle, refers to no reported case where captures have ever been made without previous notice to shipping (pp. 60, 61).

It was not in accordance with international usage to attempt to make the *Buena Ventura* hostile by firing upon her. This point was much discussed in connection with the sinking of the *Kow-Shing* at the opening of the late war between China and Japan. The *Kow-Shing* flew the British flag, but was in the transport service of the Chinese. She was fired upon by the Japanese before declaration of war. On this point Professor Westlake, in a communication to the London *Times*, August 3, 1894, said:

"But, thirdly, the Japanese could not make the *Kow-Shing* a belligerent by attacking her. In order to jus-

tify themselves against her neutral owners and the neutrals whom she carried, they must show either that war had already been commenced *de facto* between China and Japan by acts of hostility committed elsewhere, or that the Chinese fleet, of which the *Kow-Shing* formed a part, was engaged in a service the completion of which Japan could not be expected to permit. The former alternative might be satisfied either by acts of hostility committed between China and Japan in Korea, or by acts of hostility committed between Korea and Japan in the course of a line of action in which Korea was receiving the support of China.

Takahashi's International Law during the the Chino-Japanese War, pp. 9, 39.

In the end the sinking of the *Kow-Shing* was justified by proof of a prior collision between the Japanese and Chinese ships of war at an earlier hour of the same day (*Takahashi*, p. 45).

The subsequent declaration of war, by the Congress, on April 25th, which recites that war had existed from and including April 21st, should not be given retroactive effect so as to justify the capture of private property which, otherwise, would not have been subject to seizure.

It was no doubt competent for Congress to make the declaration in that form, and all questions concerning our external or public relations are governed by the enactment; but it should not be deemed intended to determine retroactively, questions of private right, or relations between the government and private persons. The legality of the conduct of the government in such matters, should be determined by the status previously existing.

On this point *Halleck's Int. Law* [by Baker], Vol. 1. page 542, says:

"Where the Government itself has fixed no positive time for the commencement of hostilities, either past or future, and where its intentions are at all doubtful, the conduct of individuals is entitled to a lenient and favorable construction. A court will not, in such cases, condemn property as involved in trade with the enemy unless fully satisfied, not only that hostilities existed, but that the fact was so public and notorious

that the knowledge of its existence was justly to be imputed to the parties by whom the acts of supposed illegality were committed or authorized. It would be plainly unjust to confiscate property, *or annul contracts*, where reasonable doubt exists, either as to the intentions of the Government *or the knowledge of the parties.*"

(**b.**) If the permission to proceed coastwise, which was granted by the Collector of Pascagoula, by authority, and which was by the master delivered to the captors, be considered as in force at the time of the ship's seizure and detention (as to which an argument has been made under Point 3, *ante* pp. 44–49), it is plain that there was no probable cause for her detention.

(**c.**) The further detention of the ship after the promulgation of the proclamation of April 26, 1898, if the ship was within the exemption granted by the 4th Section thereof, as a vessel within a port or place of the United States on that date, and not of the class of vessels in terms excluded from its effect, there was no probable cause for detaining her beyond that date, and damages should follow the wrongful continuance of the proceedings instituted for her condemnation.

Last Point.

The decree of the Court below should be reversed and an order made for further proofs, or for the restoration of the proceeds of the ship, with damages and costs.

New York, October 26, 1899.

Respectfully submitted,

CONVERS & KIRLIN,
Proctors for the Buena Ventura.

J. PARKER KIRLIN,
Advocate.

Appendix A.

I.

Declaration of Her Majesty, dated March 28, 1854, with reference to Neutrals and Letters of Marque.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, having been compelled to take up arms in support of an Ally, is desirous of rendering the war as little onerous as possible to the Powers with whom she remains at peace.

To preserve the commerce of Neutrals from all unnecessary obstruction, Her Majesty is willing for the present to waive a part of the belligerent rights appertaining to her by the Law of Nations.

It is impossible for Her Majesty to forego the exercise of her right of seizing articles contraband of war, and of preventing Neutrals from bearing the Enemy's despatches, and she must maintain the right of a belligerent to prevent Neutrals from breaking any effective blockade which may be established with an adequate force against the Enemy's forts, harbours, or coasts.

But Her Majesty will waive the right of seizing Enemy's property laden on board a neutral vessel, unless it be contraband of war.

It is not Her Majesty's intention to claim the confiscation of neutral property, not being contraband of war, found on board Enemy's ships; and Her Majesty further declares, that being anxious to lessen as much as possible the evils of war, and to restrict its operations to the regularly organised forces of the country, it is not her present intention to issue Letters of Marque for the commissioning of Privateers.

Westminster, March 28, 1854.

(Holland, Manual of Naval Prize Law, p. 119.)

Appendix B.

At the Court at Buckingham Palace,
the 29th day of March, 1854.
Present,
The Queen's most Excellent Majesty in Council.

Her Majesty, being compelled to declare war against his Imperial Majesty the Emperor of all the Russias, and being desirous to lessen as much as possible the evils thereof, is pleased by and with the advice of her Privy Council, to order, and it is hereby ordered, that Russian merchant vessels, in any ports or places within her Majesty's dominions, shall be allowed until the tenth day of May, next, six weeks from date hereof, for loading their cargoes and departing from such ports or places; and that such Russian Merchant Vessels, if met at sea by any of her Majesty's ships, shall be permitted to continue their voyage, if on examination of their papers it shall appear that their cargoes were taken on board before the expiration of the above term: Provided, that nothing herein contained shall extend or be taken to extend to Russian vessels having on board any officer in the military or naval service of the enemy, or any article prohibited or contraband of war, or any despatch of or to the Russian Government.

And it is hereby further ordered by her Majesty, by and with the advice of her Privy Council as aforesaid, that any Russian merchant vessel which, prior to the date of this order, shall have sailed from any foreign port bound for any port or place in her Majesty's dominions, shall be permitted to enter such port or place, and to discharge her cargo, and afterwards forthwith to depart without molestation; and that any such vessel, if met at sea by any of her Majesty's ships, shall be permitted to continue her voyage to any port not blockaded.

And the right honourable the Lords Commissioners of her Majesty's Treasury, the Lords Commissioners of the Admiralty, and the Lord Warden of the Cinque Ports, are to give the necessary directions herein as to them may respectively appertain.

C. C. GREVILLE.

Appendix C.

FRENCH PROCLAMATION OF MARCH 27, 1854.

ART. 1er. Un delai de six semaines à partir de ce jour est accordé aux navires de commerce russes pour sortir des ports français.

En conséquence, les navires de commerce russes, qui se trouvent actuellement dans nos ports, ou ceux qui, étant sortis des ports russes antérieurement à la déclaration de guerre, entreront dans les ports français, pourront y sejourner et compléter leur chargement jusqu'au neuf mai inclusivement.

ART. 2. Ceux de ces navires qui viendraient à être capturé par les croiseurs français aprés leur sortie des ports de l'empire, seront relâchés, s'ils établissent, par leurs papiers de bord qu'ils se rendent directement à leur port de destination, et qu'ils n'ont pu encore y parvenir.

Le ministre des affaires étrangères.

DROUYN DE LHUYS.

(Pistoye et Duverdy, Des Prises Maritimes II., 467-8).

Appendix D.

RUSSIAN PROCLAMATION OF APRIL 19, 1854.

(*Avis du ministre des finances de Russie No. 4 de la Gazette du Commerce du 19 avril.*)

Prenant en considération les déclarations des gouvernements anglais et français, le gouvernement impérial dans son désir sincère d'écarte rautant que possible des particuliers les conséquences désastreuses de la guerre, a arrêté les règles suivantes:

Un delai de six semaines est accordé aux navires de commerce anglais et français qui se trouvent dans nos ports pour effectuer leur chargement et faire voile sans empêchement pour l' étranger. Dans les ports de la mer Noire, de la mer d'Azoff et de la mer Baltique ce delai sera compté a partir du 25 avril courant: et dans les ports de la mer Blanche à partir du joùr où la navigation aura été ouverte dans chacun d'eux.

Les navires de commerce anglais et français qui après être sortis de nos ports seront rencontrés en mer par nos croiseurs, même après l'expiration du delai fixé, en obtiendront la permission de continuer leur voyage du moment que l'examen de leurs papiers de bord aura prouvé que leur cargaison a été embarqué avant l'expiration de ce delai.

(Pistoye et Duverdy II, 471.)

No. 106
Brief of Atty. Gen. & Sol. Gen. U. S.
Filed Nov. 1, 1899.

Office Supreme Court U. S.
FILED
NOV 1 1899
JAMES H. MCKENNEY
Clerk

In the Supreme Court of the United States.

OCTOBER TERM, 1899.

THE STEAMSHIP BUENA VENTURA, JUAN de Lazarraga, claimant, appellant,
v.
THE UNITED STATES.
} No. 106.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

BRIEF FOR THE UNITED STATES AND THE CAPTORS.

In the Supreme Court of the United States.

OCTOBER TERM, 1899.

THE STEAMSHIP BUENA VENTURA, JUAN de Luzarraga, claimant, appellant,
v.
THE UNITED STATES.
No. 106.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

BRIEF FOR THE UNITED STATES AND THE CAPTORS.

STATEMENT.

The facts in this case are substantially undisputed, and are as follows:

The vessel was a merchant vessel, a cargo carrier exclusively, trading between ports of England, Spain, the United States, and the West Indies, and was owned by Spanish subjects, part of whom resided in England

and part in Spain; she sailed under the Spanish flag and royal patent, commanded by a master and manned by thirty-three other mariners, all of whom were Spanish subjects. Her last voyage commenced at Liverpool with a general cargo on board, and thence proceeded by way of Santander, Spain, to San Juan, Porto Rico, and Havana and other Cuban ports to discharge; thence in ballast by way of Ship Island, Miss., to Pascagoula, Miss., where she took on, between April 1 and 13, 1898, a cargo of lumber destined for Rotterdam, Holland, under a charter party, dated Liverpool, March 18, 1898, which describes the vessel as "now ready to leave Cuba." On April 18, 1898, she cleared from Scranton, Miss. (the port and customs district for Pascagoula), and proceeded to Ship Island and was detained there by low water, and thence sailed on April 19 between 8 and 9 o'clock a. m.; about 7 o'clock on the morning of April 22 the vessel was captured by the U. S. S. *Nashville*, some 8 or 9 miles off Sand Key Light, while steering east near the coast along the Florida reef and adjacent to Key West, Fla. The vessel's papers were regular and free from suspicion. Besides the bills of lading for cargo and the charter party, there were the following clearance papers from the United States authorities: An outward foreign manifest showing the vessel to be bound for Rotterdam; a coasting manifest showing Norfolk, Va., as the destination, and containing a permit to proceed to that port "to lade bunker coal;" a bill of health showing "Norfolk and other places beyond sea" as the destination; a receipt for duties showing tax of official

fees under the "coastwise" heading; a certificate of payment of 3 cents a ton tonnage duty on a previous entry from Cienfuegos at Brunswick, Ga., as the first payment in the year beginning September 9, 1897. It was admitted by stipulation (p. 32) that the log of the *Buena Ventura* and the certificate of the Spanish vice-consul at Pascagoula state that the vessel sailed for "Rotterdam via Norfolk."

In the adjudication below two witnesses were examined *in preparatorio*—the master and the first officer. The decree restored all the cargo as neutral, and condemned the vessel because, although she had permission to touch at Newport News [Norfolk] for coal on her voyage to Rotterdam, Newport News was not her port of discharge; and, having been captured when pursuing the same course she would have pursued had there been no intention to stop for coal, neither such intention nor the permission tended in anyway to increase the liability to capture; and that her case clearly did not come within the language of the President's proclamation of April 26, 1898. Thereupon the master, as claimant on behalf of owners, took this appeal.

The above facts appear in the claim and affidavit (pp. 6, 7), the depositions (pp. 17–23), the opinion (pp. 24, 31), and by the documents appended and interleaved (pp. 32, 39). The President's proclamation of April 26, 1898, is printed as an appendix to this brief. The assignments of error (pp. 10–11) contend that the vessel was exempt from capture as prize under the fourth and fifth articles of the proclamation.

ARGUMENT.

In the language of the prize court, the *Buena Ventura* was an enemy vessel found upon the high seas at the commencement of the war, and not coming within the exceptions in the proclamation; and it is upon these grounds that we ask the court to affirm the condemnation.

There is some doubt upon the testimony and the official papers as to the nature of the voyage when the vessel was captured, both concerning the correct point of departure and termination and relative to its character as domestic or foreign when in or near our waters. This raises the question of "continuous voyages." This is perhaps the same question under two aspects, and arises because of the doubt (not amounting to a dispute) as between the captain's statement that the "last voyage began at Scranton to Rotterdam" (p. 18) and the first officer's statement that the last voyage began at Liverpool and was to have ended at Rotterdam (p. 22). The date of departure from Liverpool does not appear. The latter view appears the more likely, because such trips are usually round voyages from and back to the foreign port of departure or some other foreign port not far distant. The vessels come to the United States in ballast from the intermediate foreign ports of discharge (West Indian), and the return voyages really begin from the latter ports. They take on in the United States return cargoes of lumber and touch at another domestic port on the way for coal. The voyage (as well as the vessel) certainly was foreign *quoad* the United States. Such a voyage starts at a foreign port and discharges at foreign ports; the

last of those ports is the outward termination of the voyage; and then returning inward and finally terminating at the initial or some other foreign port, touches here for cargo and coal. Presumably a preceding voyage on entry at Brunswick, Ga., from Cienfuegos (p. 34) was made in the same way for the same purposes, for the first payment of foreign tonnage tax under the act of June 26, 1884, as amended by section 11 of the act of June 19, 1886 (24 Stat., 79), was then imposed, our customs authorities, however, evidently regarding the "West India Islands" as the foreign point of origin of the voyage rather than the initial European port. This was, of course, to look at the voyage as in two parts, and to lay our tax in view of the starting point of the return or inward portion of the voyage. Thus the ship was foreign and the voyage was foreign, and began at all events, considering it as a return voyage (outward from this country), at the final port of discharge in Cuba, and not from this country. It is true that statutory provisions, presently to be referred to, regarding a coastwise license expressly state that the tonnage tax is not to be affected thereby, and this is so whether the proper rate is that for certain West Indian and other foreign ports or for European ports, on which it may be argued that the coastwise license grants a certain domestic character to the intermediate portion of the voyage proceeding under the same notwithstanding the tonnage tax.

Now, this question is of some interest and importance in the case, because under the Treasury regulations (Syn. 17198) a foreign vessel, clearing from a domestic port to a foreign port via a domestic port, where she stops for

coal, supplies, or cargo, should proceed under sections 4367–4369, Revised Statutes, which require foreign vessels bound coastwise to deliver a manifest of the lading on board to the collector of the district of departure and to the collector at the port of call. These provisions obviously relate particularly to a case where there may be foreign goods to be unladen and imported. These regulations state that shippers' manifests of exports should be accepted by the collector at the first port as if the vessel were to proceed from such port directly to a foreign port. Nevertheless, although no foreign goods may be on board, and the call be merely for fuel, it seems that there is a final clearance in the case of vessels specified in the ruling at the second port which is called the "last port of departure."

We contend, therefore, that this vessel started on her return voyage at the last port of discharge, Cienfuegos, and, notwithstanding the subsequent domestic clearance at Scranton (where she received also a foreign clearance), she was a foreign vessel sailing from a foreign port to a foreign port via a domestic port, or via two domestic ports. Her own papers show this to be the case. The charter party, interleaved between pages 38 and 39 of the record, state that she "is ready to leave Cuba," and that after proceeding to Ship Island to load, she is to proceed with her load, "as customary, to Rotterdam." The last Cuban port, Cienfuegos, was the final port of discharge. In the *Rol de Navegacion*, which appears to be the crew list, and is not paged, the last entry in the latter half of the book, which is devoted to the entry and

clearance of the vessel under the heading "*Llegada a puertos*" (seeming to be the Spanish phrase for "arrivals in port"), shows that the vessel reached Pascagoula "proceeding from Cienfuegos."

And, looking at the facts as to our customs control over the vessel, and conceding that the Treasury regulations require final entry and clearance even at a coaling port, we contend that this was at all events a "foreign vessel clearing from a domestic port to a foreign port," although it was via another domestic port; the Scranton clearance was foreign, the destination plainly shown to be Rotterdam, merely *via Norfolk;* in other words, while there was a domestic clearance as well under the regulation, this is to be taken merely as part of the permit to stop, a concession appended to and incorporated in the foreign clearance. The vessel's own papers show this also; see stipulation (p. 32); see also bills of lading interleaved after that page, and the outward foreign manifest (p. 37), and the master's oath thereon (id.), which are conclusive of the destination and character of the voyage as foreign, notwithstanding the fact that the permit to proceed coastwise for coal involves a coasting manifest (p. 38) and a domestic bill of health (p. 36). And while there was to be a final entry and foreign clearance at Norfolk, which in a sense was inconsistent with the real nature of the case and state of the facts, may this method of customs administration in the regulation of vessels (framed to detect illegal importation and as a check for statistic returns) avoid the effect of the definite foreign clearance from the first port a few days before capture, or confer a

right or character upon the vessel which would not otherwise exist? We think not. She is bound by her character and the real character of the voyage, and can not even on a strict and technical view of the case draw to herself a peculiar character and a safeguard (because of the permit and the necessity for final clearance at Norfolk as the last port of departure) which is not well founded.

Now, looking at the essence: If, because of the permit, her status had been really changed in any substantial respect, or if the good faith of the Government, above the language of the proclamation, were concerned to sustain a temporary domestic quality conferred upon her as within or near our territorial waters under pledge of safety, the case might be otherwise. But the good faith of the Government is not so involved. The court held, and it was the fact, that "when captured" she must have been pursuing the same course she would have pursued had there been no intention to stop for coal, and neither such intention nor permission tended in anyway to increase her liability to capture.

The record shows that the *Buena Ventura* was captured about 8 or 9 miles from Sand Key light-house, near Key West (master's deposition, p. 17; first officer, p. 31). The court found that when captured she must have been pursuing the same course that she would have pursued had she intended to proceed to Rotterdam without stopping for coal. It is quite evident from inspection of the Navy Chart (Atlantic Coast of the United States, Cape Canaveral to Havana, with Straits of Florida and Bahama Banks, compiled from the latest United States

Coast and British Admiralty Surveys, 1886) that this is the fact, because her naturally proper course for Rotterdam would have carried her along the Florida coast until she was well clear of the Great and Little Bahama Banks. If she had been captured farther north, having deflected from the Rotterdam course in order to proceed on to Norfolk, the claim here made might be tenable; but as the case stands it is not, because she was pursuing at the time she was captured her normal course to Rotterdam. How is it possible to say that she may not have given up the intention to stop at Norfolk and have determined to keep on to Rotterdam? The coal in her bunkers, while possibly low (although there is no evidence on that point), may have been sufficient to carry her to Rotterdam or at least to some home port. As to the suggestion made here that she was not captured on the high seas at all, but in our territorial waters and therefore, constructively, was entitled to the protection of the fourth article, the libel says "on the high seas;" the testimony is "8 or 9 miles from Sand Key light." There is nothing to show that in her course along the Florida reefs she was ever within the limit of territorial waters, but the contrary. Sailing in that locality the navigator's prudence would dictate that they should be at all times well off land.

Now, looking at the language of the proclamation—under its exemptions this Spanish vessel was not in a port of the United States on April 21, the earliest date to which the exemption in article 4 could relate; nor was it such a vessel protected by article 5, because, while it sailed from a foreign port bound to the United States prior to April 21, this sailing was not for the purpose of

discharging cargo in the United States, and only such Spanish vessels are fairly to be regarded as protected by the letter and reason of the proclamation.

In other words, the foreign character does not protect the vessel, because she was not coming to this country to discharge at all, either on her original entrance at Pascagoula or her proposed call at Norfolk, and the purpose and motive of the relative exemption of the proclamation is to protect foreign vessels sailing with cargoes for the United States before the war and likely to be taken unawares with their cargoes as they approach our coasts. Nor can the domestic situation protect her, because she was not in a port of the United States; and while a hypothetical case might be imagined in which a vessel's situation in or near our waters would justify the view that she was within the protection of article 4 of the proclamation, although not in a port of the United States, this case is not covered by such a view, but under both the letter and spirit of the proclamation is valid prize for the reasons found by the court and above stated.

We do not need to dwell on the propositions that exemptions founded upon such a document should be express or deducible by clear and necessary inference; that where in the natural signification of the words the meaning is plain and there is nothing to interpret, an "interpretation" is not allowable; and, finally, that the introduction of a different and enlarged meaning and the extension of the exemptions to cases not covered nor intended to be covered may not be permitted under the doctrines of prize law and well-fixed principles of all law relating to statutory construction. (Vattel, lib. 2, c. 17,

sec. 262; *Doggett* v. *Florida R. R.*, 99 U. S., 72; *Thornley* v. *United States*, 113 U. S., 310; *Lake County Commrs.* v. *Rollins*, 130 U. S., 662; *The Phœnix*, Spink's Prize Cases, 1; *The Argo*, Id., 52.)

THE APPELLANT'S BRIEF.

The main contentions are that the *Buena Ventura* had sailed from a foreign port prior to April 21, and was protected by article 5 of the proclamation, arguing that, though the ship was in ballast, from the moment she sailed from Cuba toward Ship Island her service and the voyage to the United States under the charter party began, and that she was also entitled to exemption under article 4 because, when the proclamation was issued on April 26, the *Buena Ventura* was actually in a port of the United States under the process issued pursuant to the prize libel.

We think we have sufficiently answered the first contention in the foregoing pages, the claim of the Government and captors being that this enemy vessel's foreign voyage technically and really terminated at the last Cuban port of discharge, and that the charter party contract by which she came here merely in ballast to get a return cargo, and the subsequent license to coal, were mere incidents of the return voyage to a *foreign* port, and did not make the vessel one of those coming here to discharge, to which exemption was extended under article 5. The argument here suggests a more detailed consideration of the question of continuity of voyage, which is reserved for examination *post*.

Concerning the second contention, and even granting that vessels in our ports April 26 and not those in our ports April 21 (which was the date fixed by decision of the prize court in the *Miguel Jorer* and *Catalina* cases, and was accepted by the Government) were protected, it is difficult to believe that this argument is seriously advanced. The view upon which the court below fixed the date of exemption under article 4 as April 21 and not April 26, the actual date of the proclamation, upon full consideration of the facts and authorities, appears to be sound; so that to receive exemption under that article it was necessary for a Spanish merchant vessel to be in a port of the United States on April 21. To arrive there, whatever the cause of arrival, upon April 26 would not satisfy the requirements of the proclamation as rightly construed. However, apart from this, how can it be successfully claimed that a vessel coming to the United States in the grasp of the law, as one for antecedent reasons subject to capture, and arriving and being in a port of the United States for adjudication in prize only, may at once receive a protection extended to quite different vessels and denied to her by reason of facts of which the capture was the expression? Whatever her rights may have been irrespective of capture, surely the capture—the badge and beginning of the penalty of condemnation—could not enlarge or change them.

The argument is also made that if the proclamation is to be regarded as ambiguous, a liberal construction of it should be adopted, and that the construction should be with due regard toward our traditional policy of exemption of private property at sea from capture during war.

We have contended *ante* that there is no real ambiguity in this proclamation; that both upon its language and clear purpose, and allowing fullest scope to its preamble that the war should be conducted upon principles in harmony with the modern views and practice of nations, its meaning is plain; that while the preamble contemplated especially the demands of modern practice in relation to the four clauses of the Declaration of Paris, no authority for such change in modern practice on the questions here involved can be found which will vary the rule that such an ordinance of certain exemptions to belligerents should be strictly construed as to dates, language, and terms. Furthermore, we respectfully submit that, construing the law as it is rather than as it may be at some time in the future, courts are not permitted so to regard our traditional policy toward the question of exemption of private property at sea (which has not yet been adopted into the law of nations) as to deny rights based upon the law as it exists. Finally, that policy has been our diplomatic attitude and not our doctrine in the courts.

Dr. Lushington in the case of *The Phœnix*, Spink's Prize Cases, 1, 5, 6, stated his opinion that a relaxation of belligerent rights emanating from the government of a country, and declared in authentic documents, should receive a liberal construction. "If the words of the document are capable of two constructions, then I am clearly of the opinion that the one most favorable to the belligerent party, in whose favor the document is issued, ought to be adopted." But he says that there must be words in the document sufficient to justify the more liberal interpretation, and that he is not at liberty to travel

out of the document; and he adds: "The court must bear in mind that its province is not *jus dare*, but *jus dicere;* and I must again refer to the principle which I have often enunciated in this court, *verbis plane expressis omnino standum est.*" He therefore construed the document before him strictly and correctly. (See also *The Argo*, id., 52.)

In the *Argo* case, the vessel was restored consistently with the doctrine of strict construction of the proclamation as thus defined, because it was clearly shown that the enemy vessel had sailed from the foreign port for a port or place in the Queen's dominions prior to the date of the Order in Council, having left Havana in ballast bound for Cork, although she had taken on cargo at the intermediate foreign port of Matanzas subsequently to the date of the order, which was not forbidden, because that document did not contemplate that the Russian vessels exempted should have been *laden* at the date of the order.

The court is respectfully referred to other briefs for the Government and captors in these prize cases for further discussion on this subject, especially the briefs in the *Panama*, *Pedro*, and *Guido* cases, and to the brief filed on behalf of certain captors in the three cases just named and the present one.

AS TO THE QUESTION OF CONTINUITY OF VOYAGE.

The law as to continuity of voyage may now be briefly considered. We contend that this foreign and enemy vessel was engaged in a voyage foreign to us at all points,

and either continuous from Liverpool and back to Rotterdam, or continuous to the last Cuban port of discharge, Cienfuegos, and thence (as the origin of the return voyage) continuous to Rotterdam, with certain domestic transactions which were mere incidents, namely, the call at Pascagoula for lumber and the permission to stop at Norfolk for coal if it should be found necessary. Under the charter the vessel had liberty to call for coal. We have suggested heretofore that this call may not have been necessary. There is nothing in the record to show that it was, except the permit itself. They may have taken that merely as a precaution, natural enough under all the circumstances. The imminent state of war was known to them in Cuba.

The decisions of the court respecting continuous voyages cited by the appellant (brief, p. 19) relate mainly to breach of blockade. In *The Circassian* (2 Wall., 135, 154) the real destination was held to be New Orleans and the alleged destination to Havana to be merely colorable. In *The Bermuda* (3 Wall., 514) the ulterior and not the direct destination was held to be the significant one, and the stress of the doctrine was extended to cover any means of getting the cargo to the real final destination, even if by several transshipments; if the cargo was contraband, the condemnation of the vessel is required whether her voyage is to ports blockaded or to those not blockaded; and, finally, in effect, a seizure wherever made was held to be properly included. The *Peterhoff* case (5 Wall., 28) practically reaffirmed these views, but distinguished between different classes of contraband,

and held that ordinarily the conveyance of contraband does not subject the vessel to forfeiture; that a blockade is not to be extended by construction, and that the mouth of the Rio Grande was not included in the blockade of the ports of the rebel States. The decision of *The Springbok* (5 Wall., 1) held that an intention to transship cargo at a neutral port did not save it; that as to cargo, both in law and intent, the voyage from London to the blockaded port was one voyage, and that the liability attached from the time of sailing if captured during any part of that voyage.

It is thus seen that these rulings against neutrals in blockade decisions do not throw any clear light on the present question. No port of the United States was the "ulterior port;" the ulterior port of this enemy vessel (not engaged in running a blockade) was, as to the outward portion of the voyage, Cienfuegos; or else, either originally or as the ulterior destination of the return voyage, Rotterdam. In short, we contend and respectfully submit that any test or analogy which may be drawn from the foregoing cases as to ulterior destination fixes the same as Rotterdam, makes the voyage a foreign one *in toto*, and requires the court to conclude that she is not entitled to the protection of article 5 of the proclamation.

The appellant's brief goes on to argue that even if the fourth section of the proclamation is limited to vessels which were in ports or places of the United States on April 21, the *Buena Ventura* was in such a place within the meaning of the proclamation, and then they seek to show (but we claim without success) that, being 8 or 9 miles from

Sand Key light, which is a few miles to the westward of Key West [Sand Key light is a little west of south of Key West and about 10 miles away], and that as she was steering close to the reefs, and may have been to the eastward or westward of the light, as well as 8 or 9 miles to the southward of it, it is therefore obvious that she had been within the range of our light-houses, and was within the immediate neighborhood of Tortugas on the night of the 21st, if, indeed, she did not pass in sight of Tortugas, and hence was clearly within our territorial waters and within a place of the United States on April 21. The appellant says, no doubt inadvertently, in conceding that the *Buena Ventura* was 8 or 9 miles away from Sand Key light, whether east, west, or south, that she may have been within a mile of it. This, of course, was not possible. Nor do we understand what the appellant means by saying that she was "within the range" of our light-houses. The table of visibility of lights given on the navy chart, referred to *supra*, gives that of Sand Key light as 16¼ nautical miles. Any vessel within that distance was "within the range." The argument, on the chart which is filed with the appellant's brief and refers to the log on file in the court as an original exhibit, assumes to fix the location of the vessel on April 21 about 100 miles in a northwesterly direction from the light of Tortugas. The brief then proceeds (p. 38):

> If the last course which is noted in the log, south 42° 30′ east, was continued, the steamer went straight to Tortugas light, and if she maintained, as

presumably she did, the average speed previously made, that is, about 8.5 knots per hour, she would have been at Tortugas about 11 p. m. of April 21.

We submit to the court that this is entirely hypothetical, and merely constructs a theory favorable to the claimants upon facts which are only assumed and which apparently the log entries, as to the last facts at least, do not bear out. We suppose the showing is really made to fortify a late application here for further proof, on the ground that if the decision of the case should make necessary the exact determination of this point—that is, the point with reference to the Tortugas on the night of April 21—further proof should be allowed. We submit that a determination of this point is not necessary. The *Buena Ventura* was no more in a "place" of the United States than she was in a "port" of the United States on April 21, but was undoubtedly well offshore at all times, steering along the reefs on her normal course to Rotterdam, and was at no time within our territorial waters; and even if she had been within our territorial waters, that would not have put her within a "port or place" of the United States within the language or intent of the proclamation. A port of the United States means a port of entry or delivery. A place of the United States means some other definite point, not technically a port, where a vessel might be at anchor, or, for instance, under a permit to load. To contend that the changing location of a vessel as she was sailing along in the marine belt would fix her in a "place of the United States" would be to set up the impossible claim that the whole stretch of territorial waters along our coast is a place of

the United States, not only as to a vessel at anchor, as in a roadstead, but also as to a vessel moving along on her ordinary voyage. The phrase "ports or places of the United States" has always been used in legislation and in decisions in reference to a fixed and definite point, and can not under proper rules of interpretation be regarded as used in the proclamation in any different or larger sense. English and American customs and criminal legislation use the phrase in the same sense, as meaning ports with defined limits and such "places" as bays, rivers, and creeks where a vessel is at rest. Other legislation, particularly relating to the land, contemplates fixed spots like dockyards and arsenals. (For decisions see, *inter alia*, *United States* v. *Bevans*, 3 Wheat., 336; *United States* v. *Brailsford*, 5 Wh., 184; *United States* v. *Rodgers*, 150 U. S., 249, and cas. cit.) It may not be improper to suggest here to the court that official records appear to show that the capture took place south-southwest from Sand Key Light.

AS TO FURTHER PROOF.

This is a matter for the sound discretion of the prize court, and may of course be ordered of its own motion or accord upon a doubt arising from any source or quarter. It is not necessary to cite authorities upon the subject. The appellate court may similarly order it if they are disposed to do so. No motion or suggestion for the taking of further proof appears to have been made below, and no such suggestion or motion could properly have been granted. The request here comes rather late, and we earnestly and respectfully contend that all the circum-

stances would make the allowance of further proof in this court improper.

We do not think that the court will regard the claim for damages as entitled to much consideration. It is perhaps made in this case, as in all such cases, as an emphatic evidence that the claimant thinks he has suffered a gross marine trespass. The capture was, of course, not premature; the state of war at the time, and even previous to the time, was well established; the blockading vessels were going to their stations when the *Buena Ventura* was seized; the day before—that is, April 21—the ministers of Spain and the United States had, respectively, retired from their posts; the subsequent act of Congress fixed the 21st as the formal date of the war, and there can be no fair question of the right of the captors to make this prize. We claim, of course, not only as a right which fully shields them from a claim for damages, but as a right which requires the condemnation of the vessel. It is not necessary, therefore, to consider whether the shot by which the *Buena Ventura* was brought to made her hostile. She was hostile without that and before that. The shot was, of course, properly fired as part of the rules of the sea regarding capture.

We respectfully submit to the court that the decree below should be affirmed.

HENRY M. HOYT,
Assistant Attorney-General,
For the United States.
JOSEPH K. MCCAMMON,
JAMES H. HAYDEN,
For the Naval Captors.

APPENDIX.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA:

A PROCLAMATION.

Whereas by an act of Congress approved April 25, 1898, it is declared that war exists and that war has existed since the 21st day of April, A. D. 1898, including said day, between the United States of America and the Kingdom of Spain; and

Whereas, it being desirable that such war should be conducted upon principles in harmony with the present views of nations and sanctioned by their recent practice, it has already been announced that the policy of this Government will be not to resort to privateering, but to adhere to the rules of the Declaration of Paris;

Now, Therefore, I, William McKinley, President of the United States of America, by virtue of the power vested in me by the Constitution and the laws, do hereby declare and proclaim:

1. The neutral flag covers enemy's goods, with the exception of contraband of war.

2. Neutral goods, not contraband of war, are not liable to confiscation under the enemy's flag.

3. Blockades in order to be binding must be effective.

4. Spanish merchant vessels, in any ports or places within the United States, shall be allowed till May 21, 1898, inclusive, for loading their cargoes and departing from such ports or places; and such Spanish merchant vessels, if met at sea by any United States ship, shall be

permitted to continue their voyage if, on examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the above term: *Provided*, that nothing herein contained shall apply to Spanish vessels having on board any officer in the military or naval service of the enemy, or any coal (except such as may be necessary for their voyage), or any other article prohibited or contraband of war, or any dispatch of or to the Spanish Government.

5. Any Spanish merchant vessel which, prior to April 21, 1898, shall have sailed from any foreign port bound for any port or place in the United States, shall be permitted to enter such port or place, and to discharge her cargo, and afterward forthwith to depart without molestation; and any such vessel, if met at sea by any United States ship, shall be permitted to continue her voyage to any port not blockaded.

6. The right of search is to be exercised with strict regard for the rights of neutrals, and the voyages of mail steamers are not to be interfered with except on the clearest grounds of suspicion of a violation of law in respect of contraband or blockade.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington, on the twenty-sixth day of April, in the year of our Lord one thousand eight hundred and ninety-eight, and of the independence of the United States the one hundred and twenty-second.

[SEAL.]

WILLIAM McKINLEY.

By the President.

ALVEY A. ADEE,
Acting Secretary of State.

○

Syllabus.

THE BUENA VENTURA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

No. 106. Argued November 1, 2, 1899. — Decided December 11, 1899.

In the fourth clause of the President's proclamation of April 26, 1898, issued after the declaration of war against Spain by Congress, April 25, 1898, it was said: "4. Spanish merchant vessels in any ports or places within the United States, shall be allowed till May 21, 1898, inclusive, for loading their cargoes and departing from such ports or places, and such Spanish merchant vessels, if met at sea by any United States ship, shall be permitted to continue their voyage if, on examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the above term; *provided*, that nothing herein contained shall apply to Spanish vessels having on board any officer in the military or naval service of the enemy, or any coal (except such as may be necessary for their voyage), or any other article prohibited or contraband of war, or any dispatch of or to the Spanish Government." The Buena Ventura, a Spanish vessel, being at Cuba in March, 1898, was chartered to proceed with all convenient speed to Ship Island, Mississippi, and there to take on board a cargo of lumber for Rotterdam. Under this charter she arrived at Ship Island in the latter part of March, 1898, and took on a cargo of lumber for Rotterdam. She cleared at the custom house on the 14th of April accordingly, but was detained by low water until April 19, when, between 8 and 9 A.M. she proceeded on her voyage. While so proceeding she was captured by a man of war of the United States about ten miles off the Florida coast. Up to the moment of capture all her officers were ignorant of the existence of a state of war, and the vessel, at the time of her capture, was following the ordinary course of her voyage. After hearing in the District Court of the United States the Buena Ventura was condemned and sold under a decree of court, and the proceeds were deposited to abide the event of an appeal from that decree. *Held;*

(1) That an innocent vessel like the Buena Ventura, which had loaded within a port of the United States, and had sailed therefrom before the commencement of the war, was entitled, under the proclamation, to continue its voyage, that being clearly within the intention of the President, under the liberal construction which this court is bound to give to that document;

(2) That the reversal of the judgment below, condemning the Buena Ventura, should be without costs or damages in her favor;

(3) That the moneys arising from the sale of the vessel must be paid to the claimant, deducting only the expenses properly incident to her custody and preservation up to the time of sale.

Statement of the Case.

DURING the late war between the United States and Spain, and on May 27, 1898, the District Court of the United States for the Southern District of Florida condemned the steamship Buena Ventura as lawful prize of war, on the ground "that the said steamship Buena Ventura was enemy's property, and was upon the high seas and not in any port or place of the United States upon the outbreak of the war, and was liable to condemnation and seizure." It was thereupon ordered that the vessel "be condemned and forfeited to the United States as lawful prize of war; but it appearing that the cargo of said steamer was the property of neutrals and not contraband and subject to condemnation and forfeiture, it is ordered that said cargo be released and restored to the claimant or the true and lawful owners thereof."

The vessel was captured on April 22, 1898, eight or nine miles from Sand Key light, on the Florida coast, by the United States ship of war Nashville, under the command of a line officer of the United States Navy, was brought into the port of Key West for adjudication, and was condemned upon the answers, given by the master and mate of the steamship, to standing interrogatories *in preparatorio*, and upon the documents seized on board the ship by the captors. This evidence showed that the steamship was a Spanish vessel engaged exclusively in the carrying of cargoes, and that at the time of her capture she was making a voyage under a charter party which had been concluded in Liverpool on March 23, 1898, between the agents of the owners and the agents of the charterers. By this charter party the steamship was described as "now ready to leave Cuba;" and it was agreed upon therein that the vessel should with all convenient speed proceed to Ship Island, Mississippi, and there take on a cargo of lumber, and proceed therewith, as customary, to Rotterdam. The vessel was to be at her loading place and ready for cargo on or before the 10th of April, and if she were not, the charterers had the option of cancelling the charter. Pursuant to this charter party the ship left Cuba and arrived at Ship Island about the 31st of March, and between that time and the 19th of April she had taken on her cargo, and on the

latter day had sailed from Ship Island bound for Norfolk, Virginia, to take in bunker coal, the charter party giving the vessel the liberty to stop at any port on the voyage for coal, then to proceed to Rotterdam. After leaving port at Ship Island she proceeded on her voyage to Norfolk, and about half-past seven o'clock on the morning of April 22, while proceeding close to the Florida reefs, was captured as stated. She made no resistance at the time of her capture, there were no military or naval officers on board of her, and she carried no arms or munitions of war. The evidence is undisputed that the vessel, when captured, was proceeding on her voyage to Norfolk.

Previous to sailing from Ship Island she was furnished with a bill of health, in which it was stated that she was now "ready to depart from the port of Pascagoula, Mississippi, [which is the customs port of Ship Island,] for Norfolk, Virginia, and other places beyond the sea." Her manifest showed that she was bound for Norfolk. It is headed "Coast Manifest," and after a description of the cargo it continues: "Permission is hereby granted to said vessel to proceed from this port to Norfolk, in the district of Norfolk and State of Virginia, to lade bunker coal;" and it was signed and sealed by the deputy collector of Pascagoula, district of Pearl River, Mississippi, on April 14, 1898, and the fees therefor paid.

The ship's clearance was for Norfolk, and contained the same permission to proceed there, to lade bunker coal.

There was no evidence which tended to throw any suspicion as to the destination of the vessel.

After obtaining all of her papers in the regular way, and having cleared at the custom house on April 14, 1898, she was detained at Ship Island by low water until between eight and nine o'clock A. M. of April 19, 1898, when she sailed over the bar and proceeded on her voyage.

In the test affidavit of the master he swore that at all times before the ship's seizure he and all of his officers were ignorant that war existed between Spain and the United States, and the vessel at the time of her capture was following the ordinary course of her voyage.

Opinion of the Court.

The various proceedings of Congress, proclamations of the President, letters of the Secretary of State, and other public documents connected with occurrences leading up to the breaking out of hostilities between this country and Spain are contained in this record, but are also set forth at sufficient length in the statement of facts contained in the report of the case of *The Pedro*, *ante* 355, and it is unnecessary, therefore, to repeat them.

After a hearing the District Court on the 27th of May, 1898, condemned the vessel, 87 Fed. Rep. 927, which was sold under the final decree of the court, and her proceeds deposited to abide the event of an appeal, which was then taken on the part of the claimant.

Mr. J. Parker Kirlin for appellant.

Mr. Assistant Attorney General Hoyt for the United States.

Mr. Joseph K. McCammon and *Mr. James H. Hayden*, for the naval captors, were on Mr. Hoyt's brief.

Mr. George A. King and *Mr. William B. King* filed a brief for certain captors.

Mr. Justice Peckham, after stating the facts as above, delivered the opinion of the court.

The Buena Ventura was a Spanish merchant vessel in the peaceful prosecution of her voyage to Norfolk, Virginia, from Ship Island, in the State of Mississippi, when, on the morning of April 22, 1898, she was captured as lawful prize of war, of the existence of which, up to the moment of capture, all her officers were ignorant. She was not violating any blockade, carried neither contraband of war nor any officer in the military or naval service of the enemy, nor any dispatch of or to the Spanish Government, and attempted no resistance when captured.

The facts regarding this vessel place her within that class

which this Government has always desired to treat with great liberality. It is, as we think, historically accurate to say that this Government has always been, in its views, among the most advanced of the Governments of the world in favor of mitigating, as to all non-combatants, the hardships and horrors of war. To accomplish that object it has always advocated those rules which would in most cases do away with the right to capture the private property of an enemy on the high seas. 3 Wharton's International Law Digest, § 342. The refusal of this Government to agree to the Declaration of Paris was founded in part upon the refusal of the other Governments to agree to the proposition exempting private property, not contraband, from capture upon the sea.

It being plain that merchant vessels of the enemy carrying on innocent commercial enterprises at the time or just prior to the time when hostilities between the two countries broke out, would, in accordance with the later practice of civilized nations, be the subject of liberal treatment by the Executive, it is necessary when his proclamation has been issued, which lays down rules for treatment of merchant vessels, to put upon the words used therein the most liberal and extensive interpretation of which they are capable; and where there are two or more interpretations which possibly might be put upon the language, the one that will be most favorable to the belligerent party, in whose favor the proclamation is issued, ought to be adopted.

This is the doctrine of the English courts, as exemplified in *The Phœnix*, Spink's Prize Cases, 1, 5, and *The Argo*, Id. p. 52. It is the doctrine which this court believes to be proper and correct.

To ascertain the intention of the Executive we must look to the words which he uses. If the language is plain and clear, and the meaning not open to discussion, there is an end of the matter. If, however, such is not the case, and interpretation or construction must be resorted to for the purpose of ascertaining the precise meaning of the text, it is our duty with reference to this public instrument to make it as broad in its exemptions as is reasonably possible.

If inferences must be drawn therefrom in order to render certain the limitations intended, those inferences should be, so far as is possible, in favor of the claimant in behalf of the owners of the vessel.

The language to justify an exemption of the vessel must, it is true, be found in the proclamation; yet if such language fail to state with entire clearness the full extent and scope of such exemption, thereby making it necessary that some interpretation thereof should be given, it is proper to refer to the prior views of the Executive Department of the Government as evidence of its policy regarding the subject. This is not for the purpose of enlarging the natural and ordinary meaning of the words used in the proclamation, but for the purpose of thereby throwing some light upon the intention of the Executive in issuing the instrument and also to aid in the interpretation of the language employed therein, where the extent or scope of that language is not otherwise entirely plain and clear. A reference to the views that have heretofore been announced by the Executive Department is made in 3 Wharton, *supra*, and it will be found that they are in entire accord with the most liberal spirit for the treatment of non-combatant vessels of the enemy.

We come now to the construction of the instrument. It will be seen that Congress on the 25th of April, 1898, declared war against Spain, and in the declaration it is stated that war had existed since the 21st of April preceding. The President on the 26th of April issued his proclamation regarding the principles to be followed in the prosecution of the war. It is dated the day it was issued. The fourth clause thereof may for convenience be here reproduced, as follows:

"4. Spanish merchant vessels in any ports or places within the United States shall be allowed until May 21st, 1898, inclusive, for loading their cargoes and departing from such ports or places; and such Spanish merchant vessels, if met at sea by any United States ship, shall be permitted to continue their voyage, if, upon examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the above term: Provided, that nothing herein

contained shall apply to Spanish vessels having on board any officer in the military or naval service of the enemy; or any coal (except such as may be necessary for their voyage), or any other article prohibited or contraband of war, or any dispatch of or to the Spanish Government."

What is included by the words "Spanish merchant vessels in any ports or places within the United States shall be allowed until May 21, 1898, inclusive, for loading their cargoes and departing from such ports or places"? At what time must these Spanish vessels be "in any ports or places within the United States" in order to be exempt from capture? The time is not stated in the proclamation, and therefore the intention of the Executive as to the time must be inferred. It is a case for construction or interpretation of the language employed.

That language is open to several possible constructions. It might be said that in describing Spanish merchant vessels in any ports, etc., it was meant to include only those which were in such ports on the day when the proclamation was issued, April 26. Or it might be held (in accordance with the decision of the District Court) to include those that were in such ports on the 21st of April, the day that war commenced, as Congress declared. Or it might be construed so as to include not alone those vessels that were in port on that day, but also those that had sailed therefrom on any day up to and including the 21st of May, the last day of exemption, and were, when captured, continuing their voyage, without regard to the particular date of their departure from port, whether immediately before or subsequently to the commencement of the war or the issuing of the proclamation.

The District Judge, before whom several cases were tried together, held that the date of the commencement of the war (April 21) was the date intended by the Executive; that as the proclamation of the 22d of April gave thirty days to neutral vessels found in blockaded ports, it was but reasonable to consider that the same number of days, commencing at the outbreak of the war, should be allowed so as to bring it to the 21st of May, the day named; that although a retrospective

effect is not usually given to statutes, yet the question always is, what was the intention of the legislature?

He also said that "the intention of the Executive was to fully recognize the recent practice of civilized nations, and not to sanction or permit the seizure of the vessels of the enemy within the harbors of the United States at the time of the commencement of the war, or to permit them to escape from ports to be seized immediately upon entering upon the high seas." (See preamble to proclamation.)

In the Buena Ventura, the case at bar, the District Judge held that her case "clearly does not come within the language of the proclamation."

It is true the proclamation did not in so many words provide that vessels which had loaded in a port of the United States and sailed therefrom before the commencement of the war should be entitled to continue their voyage, but we think that those vessels are clearly within the intention of the proclamation under the liberal construction we are bound to give to that document.

An intention to include vessels of this class in the exemption from capture seems to us a necessary consequence of the language used in the proclamation when interpreted according to the known views of this Government on the subject and which it is to be presumed were the views of the Executive. The vessel when captured had violated no law, she had sailed from Ship Island after having obtained written permission, in accordance with the laws of the United States, to proceed to Norfolk in Virginia, and the permission had been signed by the deputy collector of the port and the fees therefor paid by the ship. She had a cargo of lumber, loaded but a short time before the commencement of the war, and she left the port but forty-eight hours prior to that event. The language of the proclamation certainly does not preclude the exemption of this vessel, and it is not an unnatural or forced construction of the fourth clause to say that it includes this case.

The omission of any date in this clause, upon which the vessel must be in a port of the United States, and prior to

which the exemption would not be allowed, is certainly very strong evidence that such a date was not material, so long as the loading and departure from our ports were accomplished before the expiration of May 21. It is also evident from the language used that the material concern was to fix a time in the future, prior to the expiration of which vessels of the character named might sail from our ports and be exempt from capture. The particular time at which the loading of cargoes and sailing from our ports should be accomplished was obviously unimportant, provided it was prior to the time specified. Whether it was before or after the commencement of the war, would be entirely immaterial. This seems to us to be the intention of the Executive, derived from reading the fourth clause with reference to the general rules of interpretation already spoken of, and we think there is no language in the proclamation which precludes the giving effect to such intention. Its purpose was to protect innocent merchantmen of the enemy who had been trading in our ports from capture, provided they sailed from such ports before a certain named time in the future, and that purpose would be wholly unaffected by the fact of a sailing prior to the war. That fact was immaterial to the scheme of the proclamation, gathered from all its language.

We do not assert that the clause would apply to a vessel which had left a port of the United States prior to the commencement of the war and had arrived at a foreign port and there discharged her cargo, and had then left for another foreign port prior to May 21. The instructions to United States ships, contained in the fourth clause, to permit the vessels "to continue their voyage" would limit the operation of the clause to those vessels that were still on their original voyage from the United States, and had taken on board their cargo (if any they had) at a port of the United States before the expiration of the term mentioned. The exemption would probably not apply to such a case as *The Phœnix*, (Spink's Prize Cases, 1). That case arose out of the English Order in Council, made at the commencement of the Crimean war. The vessel had sailed from an English port in the middle of

Opinion of the Court.

February, 1854, with a cargo, bound for Copenhagen, and having reached that port and discharged her cargo by the middle of March, she had sailed therefrom on the 10th of April, bound to a foreign port, and was captured on the 12th of April while proceeding on such voyage. The Order in Council was dated the 29th of March, 1854, and provided that "Russian merchant vessels, in any ports or places within her Majesty's dominions, shall be allowed until the tenth day of May next, six weeks from the date hereof, for loading their cargoes and departing from such ports or places," etc. The claim of exemption was made on the ground that the vessel had been in an English port, and although she sailed therefrom in the middle of February to Copenhagen and had there discharged her cargo, before the Order in Council was promulgated, yet it was still urged that she was entitled to exemption from capture. The court held the claim was not well founded, and that it could not by any latitude of construction hold a vessel to have been in an English port on the 29th of March, which on that day was lying in the port of Copenhagen, having at that time discharged the cargo which she had taken from the English port. It is true the court took the view that the vessel must at all events have been in an English port on the 29th of March in order to obtain exemption, and if not there on that day, the vessel did not come within the terms of the order and was not exempt from capture. From the language of the opinion in that case it would seem not only that a vessel departing the day before the 29th of March would not come within the exemption, but that a vessel arriving the day after the 29th, and departing before the 10th of May following, would also fail to do so; that the vessel must have been in an English port on the very day named, and if it departed the day before or arrived the day after, it was not covered by the order.

The French Government also, on the outbreak of the Crimean war, decreed a delay of six weeks, beginning on the date of the decree, to Russian merchant vessels in which to leave French ports. Russia issued the same kind of a decree, and other nations have at times made the same provisions. It is

claimed that they confine the exemption to vessels that are actually within the ports of the nation at the date of issuing the decree or order.

We are not inclined to put so narrow a construction upon the language used in this proclamation. The interpretation which we have given to it, while it may be more liberal than the other, is still one which may properly be indulged in.

If this vessel, instead of sailing on the 19th, had not sailed until the 21st of April, the court below says she would have been exempt from capture. In truth, she was from her character and her actual employment just as much the subject of liberal treatment, and was as equitably entitled to an exemption when sailing on the 19th, as she would have been had she waited until the 21st. No fact had occurred since her sailing which altered her case in principle from the case of a vessel which had been in port on, though sailing after, the 21st. To attribute an intention on the part of the Executive to exempt a vessel if she sailed on or after the 21st of April, and before the 21st of May, and to refuse such exemption to a vessel in precisely the same situation, only sailing before the 21st, would, as we think, be without reasonable justification. It may safely be affirmed that he never had any such distinction in mind and never intended it to exist. There is nothing in the nature of the two cases calling for a difference in their treatment. They both alike called for precisely the same rule, and if there be language in the clause or proclamation from which an inference can be drawn favorable to the exemption, and none which precludes it, we are bound to hold that the exemption is given. We think the language of the proclamation does permit the inference and that there is none which precludes it.

We are aware of no adjudications of our own court as to the meaning to be given to words similar to those contained in the proclamation, and it may be that a step in advance is now taken upon this subject. Where, however, the words are reasonably capable of an interpretation which shall include a vessel of this description in the exemption from capture, we are not averse to adopting it, even though this court may be the first to do so. If the Executive should hereafter be inclined

to take the other view, the language of his proclamation could be so altered as to leave no doubt of that intention, and it would be the duty of this court to be guided and controlled by it.

Deciding as we do in regard to the fourth clause, it becomes unnecessary to examine the other grounds for a reversal discussed at the bar.

The question of costs then arises. We had occasion in *The Olinde Rodrigues*, 174 U. S. 510, to examine that question in relation to the existence of probable cause for making the capture. In that case it was held that such probable cause did exist, and although the facts therein proved did not commend the vessel to the favorable consideration of the court, yet upon a careful review of the entire evidence we held that we were not compelled to proceed to the extremity of condemning the vessel. Restitution was, therefore, awarded, but without damages. Payment of the costs and expenses incident to her custody and preservation, and of all costs in the case except the fees of counsel, were imposed upon the ship.

In this case, but for the proclamation of April 26, the ship would have been liable to seizure and condemnation as enemy's property. At the time of seizure, however, (April 22,) that proclamation had not been issued, and hence there was probable cause for her seizure, although the vessel was herself entirely without fault. The subsequent issuing of the proclamation covering the case of a vessel situated as was this one took away the right to condemn which otherwise would have existed. Thus, at the time of seizure, both parties, the capturing and the captured ship, were without fault, and while we reverse the judgment of condemnation and award restitution, we think it should be without damages or costs in favor of the vessel captured.

The ship having been sold, the moneys arising from the sale must be paid to the claimant without the deduction of any costs arising in the proceeding, but after deducting the expenses properly incident to her custody and preservation up to the time of her sale, and it is so ordered.

The Chief Justice and Mr. Justice Gray and Mr. Justice McKenna dissented.